Chapter 1[1]

Subject Matter and Scope of Copyright

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§101 · Definitions[2]

Except as otherwise provided in this title, as used in this title, the following terms and their variant forms mean the following:

An "anonymous work" is a work on the copies or phonorecords of which no natural person is identified as author.

An "architectural work" is the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features.[3]

"Audiovisual works" are works that consist of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.

The "Berne Convention" is the Convention for the Protection of Literary and Artistic Works, signed at Berne, Switzerland, on September 9, 1886, and all acts, protocols, and revisions thereto.[4]

The "best edition" of a work is the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes.

A person's "children" are that person's immediate offspring, whether legitimate or not, and any children legally adopted by that person.

A "collective work" is a work, such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.

A "compilation" is a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term "compilation" includes collective works.

A "computer program" is a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result.[5]

"Copies" are material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term "copies" includes the material object, other than a phonorecord, in which the work is first fixed.

"Copyright owner", with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right.

A "Copyright Royalty Judge" is a Copyright Royalty Judge appointed under section 802 of this title, and includes any individual serving as an interim Copyright Royalty Judge under such section.[6]

A work is "created" when it is fixed in a copy or phonorecord for the first time; where a work is prepared over a period of time, the portion of it that has been fixed at any particular time constitutes the work as of that time, and where the work has been prepared in different versions, each version constitutes a separate work.

A "derivative work" is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications, which, as a whole, represent an original work of authorship, is a "derivative work".

A "device", "machine", or "process" is one now known or later developed.

A "digital transmission" is a transmission in whole or in part in a digital or other nonanalog format.[7]

To "display" a work means to show a copy of it, either directly or by means of a film, slide, television image, or any other device or process or, in the case of a motion picture or other audiovisual work, to show individual images nonsequentially.

An "establishment" is a store, shop, or any similar place of business open to the general public for the primary purpose of selling goods or services in which the majority of the gross square feet of space that is nonresidential is used for that purpose, and in which nondramatic musical works are performed publicly.[8]

The term "financial gain" includes receipt, or expectation of receipt, of anything of value, including the receipt of other copyrighted works.[9]

A work is "fixed" in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is "fixed" for purposes of this title if a fixation of the work is being made simultaneously with its transmission.

A "food service or drinking establishment" is a restaurant, inn, bar, tavern, or any other similar place of business in which the public or patrons assemble for the primary purpose of being served food or drink, in which the majority of the gross square feet of space that is nonresidential is used for that purpose, and in which nondramatic musical works are performed publicly.[10]

The "Geneva Phonograms Convention" is the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, concluded at Geneva, Switzerland, on October 29, 1971.[11]

The "gross square feet of space" of an establishment means the entire interior space of that establishment, and any adjoining outdoor space used to serve patrons, whether on a seasonal basis or otherwise.[12]

The terms "including" and "such as" are illustrative and not limitative.

An "international agreement" is—

(1) the Universal Copyright Convention;

(2) the Geneva Phonograms Convention;

(3) the Berne Convention;

(4) the WTO Agreement;

(5) the WIPO Copyright Treaty;[13]

(6) the WIPO Performances and Phonograms Treaty;[14] and

(7) any other copyright treaty to which the United States is a party.[15]

A "joint work" is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.

"Literary works" are works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards, in which they are embodied.

The term "motion picture exhibition facility" means a movie theater, screening room, or other venue that is being used primarily for the exhibition of a copyrighted motion picture, if such exhibition is open to the public or is made to an assembled group of viewers outside of a normal circle of a family and its social acquaintances.[16]

"Motion pictures" are audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

To "perform" a work means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible.

A "performing rights society" is an association, corporation, or other entity that licenses the public performance of nondramatic musical works on behalf of copyright owners of such works, such as the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.[17]

"Phonorecords" are material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term "phonorecords" includes the material object in which the sounds are first fixed.

"Pictorial, graphic, and sculptural works" include two-dimensional and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, diagrams, models, and technical drawings, including architectural plans. Such works shall include works of artistic

craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned; the design of a useful article, as defined in this section, shall be considered a pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.[18]

For purposes of section 513, a "proprietor" is an individual, corporation, partnership, or other entity, as the case may be, that owns an establishment or a food service or drinking establishment, except that no owner or operator of a radio or television station licensed by the Federal Communications Commission, cable system or satellite carrier, cable or satellite carrier service or programmer, provider of online services or network access or the operator of facilities therefor, telecommunications company, or any other such audio or audiovisual service or programmer now known or as may be developed in the future, commercial subscription music service, or owner or operator of any other transmission service, shall under any circumstances be deemed to be a proprietor.[19]

A "pseudonymous work" is a work on the copies or phonorecords of which the author is identified under a fictitious name.

"Publication" is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.

To perform or display a work "publicly" means—

(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or

(2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.

"Registration", for purposes of sections 205(c)(2), 405, 406, 410(d), 411, 412, and 506(e), means a registration of a claim in the original or the renewed and extended term of copyright.[20]

"Sound recordings" are works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.

"State" includes the District of Columbia and the Commonwealth of Puerto Rico, and any territories to which this title is made applicable by an Act of Congress.

A "transfer of copyright ownership" is an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license.

A "transmission program" is a body of material that, as an aggregate, has been produced for the sole purpose of transmission to the public in sequence and as a unit.

To "transmit" a performance or display is to communicate it by any device or process whereby images or sounds are received beyond the place from which they are sent.

A "treaty party" is a country or intergovernmental organization other than the United States that is a party to an international agreement.[21]

The "United States", when used in a geographical sense, comprises the several States, the District of Columbia and the Commonwealth of Puerto Rico, and the organized territories under the jurisdiction of the United States Government.

For purposes of section 411, a work is a "United States work" only if—

(1) in the case of a published work, the work is first published—

(A) in the United States;

(B) simultaneously in the United States and another treaty party or parties, whose law grants a term of copyright protection that is the same as or longer than the term provided in the United States;

(C) simultaneously in the United States and a foreign nation that is not a treaty party; or

(D) in a foreign nation that is not a treaty party, and all of the authors of the work are nationals, domiciliaries, or habitual residents of, or in the case of an audiovisual work legal entities with headquarters in, the United States;

(2) in the case of an unpublished work, all the authors of the work are nationals, domiciliaries, or habitual residents of the United States, or, in the case of an unpublished audiovisual work, all the authors are legal entities with headquarters in the United States; or

(3) in the case of a pictorial, graphic, or sculptural work incorporated in a building or structure, the building or structure is located in the United States.[22]

A "useful article" is an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. An article that is normally a part of a useful article is considered a "useful article".

The author's "widow" or "widower" is the author's surviving spouse under the law of the author's domicile at the time of his or her death, whether or not the spouse has later remarried.

The "WIPO Copyright Treaty" is the WIPO Copyright Treaty concluded at Geneva, Switzerland, on December 20, 1996.[23]

The "WIPO Performances and Phonograms Treaty" is the WIPO Performances and Phonograms Treaty concluded at Geneva, Switzerland, on December 20, 1996.[24]

A "work of visual art" is—

(1) a painting, drawing, print, or sculpture, existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author, or, in the case of a sculpture, in multiple cast, carved, or fabricated sculptures of 200 or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author; or

(2) a still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the author, or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author.

A work of visual art does not include—

(A)(i) any poster, map, globe, chart, technical drawing, diagram, model, applied art, motion picture or other audiovisual work, book, magazine, newspaper, periodical, data base, electronic information service, electronic publication, or similar publication;

(ii) any merchandising item or advertising, promotional, descriptive, covering, or packaging material or container;

(iii) any portion or part of any item described in clause (i) or (ii);

(B) any work made for hire; or

(C) any work not subject to copyright protection under this title.[25]

A "work of the United States Government" is a work prepared by an officer or employee of the United States Government as part of that person's official duties.

A "work made for hire" is—

(1) a work prepared by an employee within the scope of his or her employment; or

(2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. For the purpose of the foregoing sentence, a "supplementary work" is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes, and an "instructional text" is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

In determining whether any work is eligible to be considered a work made for hire under paragraph (2), neither the amendment contained in section 1011(d) of the Intellectual Property and Communications Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of Public Law 106-113, nor the deletion of the words added by that amendment—

(A) shall be considered or otherwise given any legal significance, or

(B) shall be interpreted to indicate congressional approval or disapproval of, or acquiescence in, any judicial determination,

by the courts or the Copyright Office. Paragraph (2) shall be interpreted as if both section 2(a)(1) of the Work Made for Hire and Copyright Corrections Act of 2000 and section 1011(d) of the Intellectual Property and Communications Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of Public Law 106-113, were never enacted, and without regard to any inaction or awareness by the Congress at any time of any judicial determinations.[26]

The terms "WTO Agreement" and "WTO member country" have the meanings given those terms in paragraphs (9) and (10), respectively, of section 2 of the Uruguay Round Agreements Act.[27]

§ 102 · Subject matter of copyright: In general[28]

(a) Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

(1) literary works;

(2) musical works, including any accompanying words;

(3) dramatic works, including any accompanying music;

(4) pantomimes and choreographic works;

(5) pictorial, graphic, and sculptural works;

(6) motion pictures and other audiovisual works;

(7) sound recordings; and

(8) architectural works.

(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

§103 · Subject matter of copyright: Compilations and derivative works

(a) The subject matter of copyright as specified by section 102 includes compilations and derivative works, but protection for a work employing preexisting material in which copyright subsists does not extend to any part of the work in which such material has been used unlawfully.

(b) The copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material. The copyright in such work is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the preexisting material.

§104 · Subject matter of copyright: National origin[29]

(a) Unpublished Works.—The works specified by sections 102 and 103, while unpublished, are subject to protection under this title without regard to the nationality or domicile of the author.

(b) Published Works.—The works specified by sections 102 and 103, when published, are subject to protection under this title if—

(1) on the date of first publication, one or more of the authors is a national or domiciliary of the United States, or is a national, domiciliary, or sovereign authority of a treaty party, or is a stateless person, wherever that person may be domiciled; or

(2) the work is first published in the United States or in a foreign nation that, on the date of first publication, is a treaty party; or

(3) the work is a sound recording that was first fixed in a treaty party; or

(4) the work is a pictorial, graphic, or sculptural work that is incorporated in a building or other structure, or an architectural work that is embodied in a building and the building or structure is located in the United States or a treaty party; or

(5) the work is first published by the United Nations or any of its specialized agencies, or by the Organization of American States; or

(6) the work comes within the scope of a Presidential proclamation. Whenever the President finds that a particular foreign nation extends, to works by authors who are nationals or domiciliaries of the United States or to works that are first published in the United States, copyright protection on substantially the same basis as that on which the foreign nation extends protection to works of its own nationals and domiciliaries and works first published in that nation, the President may by proclamation extend protection under this title to works of

which one or more of the authors is, on the date of first publication, a national, domiciliary, or sovereign authority of that nation, or which was first published in that nation. The President may revise, suspend, or revoke any such proclamation or impose any conditions or limitations on protection under a proclamation.

For purposes of paragraph (2), a work that is published in the United States or a treaty party within 30 days after publication in a foreign nation that is not a treaty party shall be considered to be first published in the United States or such treaty party, as the case may be.

(c) Effect of Berne Convention.—No right or interest in a work eligible for protection under this title may be claimed by virtue of, or in reliance upon, the provisions of the Berne Convention, or the adherence of the United States thereto. Any rights in a work eligible for protection under this title that derive from this title, other Federal or State statutes, or the common law, shall not be expanded or reduced by virtue of, or in reliance upon, the provisions of the Berne Convention, or the adherence of the United States thereto.

(d) Effect of Phonograms Treaties.—Notwithstanding the provisions of subsection (b), no works other than sound recordings shall be eligible for protection under this title solely by virtue of the adherence of the United States to the Geneva Phonograms Convention or the WIPO Performances and Phonograms Treaty.[30]

§104A · Copyright in restored works[31]

(a) Automatic Protection and Term.—

(1) Term.—

(A) Copyright subsists, in accordance with this section, in restored works, and vests automatically on the date of restoration.

(B) Any work in which copyright is restored under this section shall subsist for the remainder of the term of copyright that the work would have otherwise been granted in the United States if the work never entered the public domain in the United States.

(2) Exception.—Any work in which the copyright was ever owned or administered by the Alien Property Custodian and in which the restored copyright would be owned by a government or instrumentality thereof, is not a restored work.

(b) Ownership of Restored Copyright.—A restored work vests initially in the author or initial rightholder of the work as determined by the law of the source country of the work.

(c) Filing of Notice of Intent to Enforce Restored Copyright Against Reliance Parties.—On or after the date of restoration, any person who owns a copyright in a restored work or an exclusive right therein may file

with the Copyright Office a notice of intent to enforce that person's copyright or exclusive right or may serve such a notice directly on a reliance party. Acceptance of a notice by the Copyright Office is effective as to any reliance parties but shall not create a presumption of the validity of any of the facts stated therein. Service on a reliance party is effective as to that reliance party and any other reliance parties with actual knowledge of such service and of the contents of that notice.

(d) Remedies for Infringement of Restored Copyrights.—

(1) Enforcement of copyright in restored works in the absence of a reliance party.—As against any party who is not a reliance party, the remedies provided in chapter 5 of this title shall be available on or after the date of restoration of a restored copyright with respect to an act of infringement of the restored copyright that is commenced on or after the date of restoration.

(2) Enforcement of copyright in restored works as against reliance parties.—As against a reliance party, except to the extent provided in paragraphs (3) and (4), the remedies provided in chapter 5 of this title shall be available, with respect to an act of infringement of a restored copyright, on or after the date of restoration of the restored copyright if the requirements of either of the following subparagraphs are met:

(A)(i) The owner of the restored copyright (or such owner's agent) or the owner of an exclusive right therein (or such owner's agent) files with the Copyright Office, during the 24-month period beginning on the date of restoration, a notice of intent to enforce the restored copyright; and

(ii)(I) the act of infringement commenced after the end of the 12-month period beginning on the date of publication of the notice in the Federal Register;

(II) the act of infringement commenced before the end of the 12-month period described in subclause (I) and continued after the end of that 12-month period, in which case remedies shall be available only for infringement occurring after the end of that 12-month period; or

(III) copies or phonorecords of a work in which copyright has been restored under this section are made after publication of the notice of intent in the Federal Register.

(B)(i) The owner of the restored copyright (or such owner's agent) or the owner of an exclusive right therein (or such owner's agent) serves upon a reliance party a notice of intent to enforce a restored copyright; and

(ii)(I) the act of infringement commenced after the end of the 12-month period beginning on the date the notice of intent is received;

(II) the act of infringement commenced before the end of the 12-month period described in subclause (I) and continued after the end of that 12-month period, in which case remedies shall be available

only for the infringement occurring after the end of that 12-month period; or

(III) copies or phonorecords of a work in which copyright has been restored under this section are made after receipt of the notice of intent.

In the event that notice is provided under both subparagraphs (A) and (B), the 12-month period referred to in such subparagraphs shall run from the earlier of publication or service of notice.

(3) Existing derivative works.—

(A) In the case of a derivative work that is based upon a restored work and is created—

(i) before the date of the enactment of the Uruguay Round Agreements Act, if the source country of the restored work is an eligible country on such date, or

(ii) before the date on which the source country of the restored work becomes an eligible country, if that country is not an eligible country on such date of enactment,

a reliance party may continue to exploit that derivative work for the duration of the restored copyright if the reliance party pays to the owner of the restored copyright reasonable compensation for conduct which would be subject to a remedy for infringement but for the provisions of this paragraph.

(B) In the absence of an agreement between the parties, the amount of such compensation shall be determined by an action in United States district court, and shall reflect any harm to the actual or potential market for or value of the restored work from the reliance party's continued exploitation of the work, as well as compensation for the relative contributions of expression of the author of the restored work and the reliance party to the derivative work.

(4) Commencement of infringement for reliance parties.—For purposes of section 412, in the case of reliance parties, infringement shall be deemed to have commenced before registration when acts which would have constituted infringement had the restored work been subject to copyright were commenced before the date of restoration.

(e) Notices of Intent to Enforce a Restored Copyright.—

(1) Notices of intent filed with the Copyright Office.—

(A)(i) A notice of intent filed with the Copyright Office to enforce a restored copyright shall be signed by the owner of the restored copyright or the owner of an exclusive right therein, who files the notice under subsection (d)(2)(A)(i) (hereafter in this paragraph referred to as the "owner"), or by the owner's agent, shall identify the title of the restored work, and shall include an English translation of the title and any other alternative titles

known to the owner by which the restored work may be identified, and an address and telephone number at which the owner may be contacted. If the notice is signed by an agent, the agency relationship must have been constituted in a writing signed by the owner before the filing of the notice. The Copyright Office may specifically require in regulations other information to be included in the notice, but failure to provide such other information shall not invalidate the notice or be a basis for refusal to list the restored work in the Federal Register.

(ii) If a work in which copyright is restored has no formal title, it shall be described in the notice of intent in detail sufficient to identify it.

(iii) Minor errors or omissions may be corrected by further notice at any time after the notice of intent is filed. Notices of corrections for such minor errors or omissions shall be accepted after the period established in subsection (d)(2)(A)(i). Notices shall be published in the Federal Register pursuant to subparagraph (B).

(B)(i) The Register of Copyrights shall publish in the Federal Register, commencing not later than 4 months after the date of restoration for a particular nation and every 4 months thereafter for a period of 2 years, lists identifying restored works and the ownership thereof if a notice of intent to enforce a restored copyright has been filed.

(ii) Not less than 1 list containing all notices of intent to enforce shall be maintained in the Public Information Office of the Copyright Office and shall be available for public inspection and copying during regular business hours pursuant to sections 705 and 708.

(C) The Register of Copyrights is authorized to fix reasonable fees based on the costs of receipt, processing, recording, and publication of notices of intent to enforce a restored copyright and corrections thereto.

(D)(i) Not later than 90 days before the date the Agreement on Trade-Related Aspects of Intellectual Property referred to in section 101(d)(15) of the Uruguay Round Agreements Act enters into force with respect to the United States, the Copyright Office shall issue and publish in the Federal Register regulations governing the filing under this subsection of notices of intent to enforce a restored copyright.

(ii) Such regulations shall permit owners of restored copyrights to file simultaneously for registration of the restored copyright.

(2) Notices of intent served on a reliance party.—

(A) Notices of intent to enforce a restored copyright may be served on a reliance party at any time after the date of restoration of the restored copyright.

(B) Notices of intent to enforce a restored copyright served on a reliance party shall be signed by the owner or the owner's agent, shall identify the restored work and the work in which the restored work is used, if any, in

detail sufficient to identify them, and shall include an English translation of the title, any other alternative titles known to the owner by which the work may be identified, the use or uses to which the owner objects, and an address and telephone number at which the reliance party may contact the owner. If the notice is signed by an agent, the agency relationship must have been constituted in writing and signed by the owner before service of the notice.

(3) Effect of material false statements.—Any material false statement knowingly made with respect to any restored copyright identified in any notice of intent shall make void all claims and assertions made with respect to such restored copyright.

(f) Immunity from Warranty and Related Liability.—

(1) In general.—Any person who warrants, promises, or guarantees that a work does not violate an exclusive right granted in section 106 shall not be liable for legal, equitable, arbitral, or administrative relief if the warranty, promise, or guarantee is breached by virtue of the restoration of copyright under this section, if such warranty, promise, or guarantee is made before January 1, 1995.

(2) Performances.—No person shall be required to perform any act if such performance is made infringing by virtue of the restoration of copyright under the provisions of this section, if the obligation to perform was undertaken before January 1, 1995.

(g) Proclamation of Copyright Restoration.—Whenever the President finds that a particular foreign nation extends, to works by authors who are nationals or domiciliaries of the United States, restored copyright protection on substantially the same basis as provided under this section, the President may by proclamation extend restored protection provided under this section to any work—

(1) of which one or more of the authors is, on the date of first publication, a national, domiciliary, or sovereign authority of that nation; or

(2) which was first published in that nation.

The President may revise, suspend, or revoke any such proclamation or impose any conditions or limitations on protection under such a proclamation.

(h) Definitions.—For purposes of this section and section 109(a):

(1) The term "date of adherence or proclamation" means the earlier of the date on which a foreign nation which, as of the date the WTO Agreement enters into force with respect to the United States, is not a nation adhering to the Berne Convention or a WTO member country, becomes—

(A) a nation adhering to the Berne Convention;

(B) a WTO member country;

(C) a nation adhering to the WIPO Copyright Treaty;[32]

(D) a nation adhering to the WIPO Performances and Phonograms Treaty;[33] or

(E) subject to a Presidential proclamation under subsection (g).

(2) The "date of restoration" of a restored copyright is—

(A) January 1, 1996, if the source country of the restored work is a nation adhering to the Berne Convention or a WTO member country on such date, or

(B) the date of adherence or proclamation, in the case of any other source country of the restored work.

(3) The term "eligible country" means a nation, other than the United States, that—

(A) becomes a WTO member country after the date of the enactment of the Uruguay Round Agreements Act;

(B) on such date of enactment is, or after such date of enactment becomes, a nation adhering to the Berne Convention;

(C) adheres to the WIPO Copyright Treaty;[34]

(D) adheres to the WIPO Performances and Phonograms Treaty;[35] or

(E) after such date of enactment becomes subject to a proclamation under subsection (g).

(4) The term "reliance party" means any person who—

(A) with respect to a particular work, engages in acts, before the source country of that work becomes an eligible country, which would have violated section 106 if the restored work had been subject to copyright protection, and who, after the source country becomes an eligible country, continues to engage in such acts;

(B) before the source country of a particular work becomes an eligible country, makes or acquires 1 or more copies or phonorecords of that work; or

(C) as the result of the sale or other disposition of a derivative work covered under subsection (d)(3), or significant assets of a person described in subparagraph (A) or (B), is a successor, assignee, or licensee of that person.

(5) The term "restored copyright" means copyright in a restored work under this section.

(6) The term "restored work" means an original work of authorship that—

(A) is protected under subsection (a);

(B) is not in the public domain in its source country through expiration of term of protection;

(C) is in the public domain in the United States due to—

(i) noncompliance with formalities imposed at any time by United States copyright law, including failure of renewal, lack of proper notice, or failure to comply with any manufacturing requirements;

(ii) lack of subject matter protection in the case of sound recordings fixed before February 15, 1972; or

(iii) lack of national eligibility;

(D) has at least one author or rightholder who was, at the time the work was created, a national or domiciliary of an eligible country, and if published, was first published in an eligible country and not published in the United States during the 30-day period following publication in such eligible country; and

(E) if the source country for the work is an eligible country solely by virtue of its adherence to the WIPO Performances and Phonograms Treaty, is a sound recording.[36]

(7) The term "rightholder" means the person—

(A) who, with respect to a sound recording, first fixes a sound recording with authorization, or

(B) who has acquired rights from the person described in subparagraph (A) by means of any conveyance or by operation of law.

(8) The "source country" of a restored work is—

(A) a nation other than the United States;

(B) in the case of an unpublished work—

(i) the eligible country in which the author or rightholder is a national or domiciliary, or, if a restored work has more than 1 author or rightholder, of which the majority of foreign authors or rightholders are nationals or domiciliaries; or

(ii) if the majority of authors or rightholders are not foreign, the nation other than the United States which has the most significant contacts with the work; and

(C) in the case of a published work—

(i) the eligible country in which the work is first published, or

(ii) if the restored work is published on the same day in 2 or more eligible countries, the eligible country which has the most significant contacts with the work.

§ 105 · Subject matter of copyright: United States Government works[37]

(a) In General.—Copyright protection under this title is not available for any work of the United States Government, but the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise.

(b) Copyright Protection of Certain of Works.—Subject to subsection (c), the covered author of a covered work owns the copyright to that covered work.

(c) Use by Federal Government.—The Secretary of Defense may direct the covered author of a covered work to provide the Federal Government with an irrevocable, royalty-free, world-wide, nonexclusive license to reproduce, dis-

tribute, perform, or display such covered work for purposes of the United States Government.

(c) Definitions.[38] — In this section:

(1) The term "covered author" means a civilian member of the faculty of a covered institution.

(2) The term "covered institution" means the following:

(A) National Defense University.
(B) United States Military Academy.
(C) Army War College.
(D) United States Army Command and General Staff College.
(E) United States Naval Academy.
(F) Naval War College.
(G) Naval Post Graduate School.
(H) Marine Corps University.
(I) United States Air Force Academy.
(J) Air University.
(K) Defense Language Institute.
(L) United States Coast Guard Academy.

(3) The term "covered work" means a literary work produced by a covered author in the course of employment at a covered institution for publication by a scholarly press or journal.

§106 · Exclusive rights in copyrighted works[39]

Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

(1) to reproduce the copyrighted work in copies or phonorecords;

(2) to prepare derivative works based upon the copyrighted work;

(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;

(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and

(6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

§ 106A · Rights of certain authors to attribution and integrity[40]

(a) Rights of Attribution and Integrity.—Subject to section 107 and independent of the exclusive rights provided in section 106, the author of a work of visual art—

(1) shall have the right—

(A) to claim authorship of that work, and

(B) to prevent the use of his or her name as the author of any work of visual art which he or she did not create;

(2) shall have the right to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation; and

(3) subject to the limitations set forth in section 113(d), shall have the right—

(A) to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and

(B) to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right.

(b) Scope and Exercise of Rights.—Only the author of a work of visual art has the rights conferred by subsection (a) in that work, whether or not the author is the copyright owner. The authors of a joint work of visual art are coowners of the rights conferred by subsection (a) in that work.

(c) Exceptions.—(1) The modification of a work of visual art which is the result of the passage of time or the inherent nature of the materials is not a distortion, mutilation, or other modification described in subsection (a)(3)(A).

(2) The modification of a work of visual art which is the result of conservation, or of the public presentation, including lighting and placement, of the work is not a destruction, distortion, mutilation, or other modification described in subsection (a)(3) unless the modification is caused by gross negligence.

(3) The rights described in paragraphs (1) and (2) of subsection (a) shall not apply to any reproduction, depiction, portrayal, or other use of a work in, upon, or in any connection with any item described in subparagraph (A) or (B) of the definition of "work of visual art" in section 101, and any such reproduction, depiction, portrayal, or other use of a work is not a destruction, distortion, mutilation, or other modification described in paragraph (3) of subsection (a).

(d) Duration of Rights.—(1) With respect to works of visual art created on or after the effective date set forth in section 610(a) of the Visual Artists Rights Act

of 1990, the rights conferred by subsection (a) shall endure for a term consisting of the life of the author.

(2) With respect to works of visual art created before the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, but title to which has not, as of such effective date, been transferred from the author, the rights conferred by subsection (a) shall be coextensive with, and shall expire at the same time as, the rights conferred by section 106.

(3) In the case of a joint work prepared by two or more authors, the rights conferred by subsection (a) shall endure for a term consisting of the life of the last surviving author.

(4) All terms of the rights conferred by subsection (a) run to the end of the calendar year in which they would otherwise expire.

(e) Transfer and Waiver.—(1) The rights conferred by subsection (a) may not be transferred, but those rights may be waived if the author expressly agrees to such waiver in a written instrument signed by the author. Such instrument shall specifically identify the work, and uses of that work, to which the waiver applies, and the waiver shall apply only to the work and uses so identified. In the case of a joint work prepared by two or more authors, a waiver of rights under this paragraph made by one such author waives such rights for all such authors.

(2) Ownership of the rights conferred by subsection (a) with respect to a work of visual art is distinct from ownership of any copy of that work, or of a copyright or any exclusive right under a copyright in that work. Transfer of ownership of any copy of a work of visual art, or of a copyright or any exclusive right under a copyright, shall not constitute a waiver of the rights conferred by subsection (a). Except as may otherwise be agreed by the author in a written instrument signed by the author, a waiver of the rights conferred by subsection (a) with respect to a work of visual art shall not constitute a transfer of ownership of any copy of that work, or of ownership of a copyright or of any exclusive right under a copyright in that work.

§107 · Limitations on exclusive rights: Fair use[41]

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

§ 108 · Limitations on exclusive rights: Reproduction by libraries and archives[42]

(a) Except as otherwise provided in this title and notwithstanding the provisions of section 106, it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work, except as provided in subsections (b) and (c), or to distribute such copy or phonorecord, under the conditions specified by this section, if—

(1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;

(2) the collections of the library or archives are (i) open to the public, or (ii) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field; and

(3) the reproduction or distribution of the work includes a notice of copyright that appears on the copy or phonorecord that is reproduced under the provisions of this section, or includes a legend stating that the work may be protected by copyright if no such notice can be found on the copy or phonorecord that is reproduced under the provisions of this section.

(b) The rights of reproduction and distribution under this section apply to three copies or phonorecords of an unpublished work duplicated solely for purposes of preservation and security or for deposit for research use in another library or archives of the type described by clause (2) of subsection (a), if—

(1) the copy or phonorecord reproduced is currently in the collections of the library or archives; and

(2) any such copy or phonorecord that is reproduced in digital format is not otherwise distributed in that format and is not made available to the public in that format outside the premises of the library or archives.

(c) The right of reproduction under this section applies to three copies or phonorecords of a published work duplicated solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, or if the existing format in which the work is stored has become obsolete, if—

(1) the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price; and

(2) any such copy or phonorecord that is reproduced in digital format is not made available to the public in that format outside the premises of the library or archives in lawful possession of such copy.

For purposes of this subsection, a format shall be considered obsolete if the machine or device necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.

(d) The rights of reproduction and distribution under this section apply to a copy, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, of no more than one article or other contribution to a copyrighted collection or periodical issue, or to a copy or phonorecord of a small part of any other copyrighted work, if—

(1) the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and

(2) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

(e) The rights of reproduction and distribution under this section apply to the entire work, or to a substantial part of it, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, if the library or archives has first determined, on the basis of a reasonable investigation, that a copy or phonorecord of the copyrighted work cannot be obtained at a fair price, if—

(1) the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and

(2) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

(f) Nothing in this section—

(1) shall be construed to impose liability for copyright infringement upon a library or archives or its employees for the unsupervised use of reproducing equipment located on its premises: *Provided,* That such equipment displays a notice that the making of a copy may be subject to the copyright law;

(2) excuses a person who uses such reproducing equipment or who requests a copy or phonorecord under subsection (d) from liability for copyright infringement for any such act, or for any later use of such copy or phonorecord, if it exceeds fair use as provided by section 107;

(3) shall be construed to limit the reproduction and distribution by lending of a limited number of copies and excerpts by a library or archives of an audiovisual news program, subject to clauses (1), (2), and (3) of subsection (a); or

(4) in any way affects the right of fair use as provided by section 107, or any contractual obligations assumed at any time by the library or archives when it obtained a copy or phonorecord of a work in its collections.

(g) The rights of reproduction and distribution under this section extend to the isolated and unrelated reproduction or distribution of a single copy or phonorecord of the same material on separate occasions, but do not extend to cases where the library or archives, or its employee—

(1) is aware or has substantial reason to believe that it is engaging in the related or concerted reproduction or distribution of multiple copies or phonorecords of the same material, whether made on one occasion or over a period of time, and whether intended for aggregate use by one or more individuals or for separate use by the individual members of a group; or

(2) engages in the systematic reproduction or distribution of single or multiple copies or phonorecords of material described in subsection (d): *Provided,* That nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.

(h)(1) For purposes of this section, during the last 20 years of any term of copyright of a published work, a library or archives, including a nonprofit educational institution that functions as such, may reproduce, distribute, display, or perform in facsimile or digital form a copy or phonorecord of such work, or portions thereof, for purposes of preservation, scholarship, or research, if such library or archives has first determined, on the basis of a reasonable investigation, that none of the conditions set forth in subparagraphs (A), (B), and (C) of paragraph (2) apply.

(2) No reproduction, distribution, display, or performance is authorized under this subsection if—

(A) the work is subject to normal commercial exploitation;

(B) a copy or phonorecord of the work can be obtained at a reasonable price; or

(C) the copyright owner or its agent provides notice pursuant to regulations promulgated by the Register of Copyrights that either of the conditions set forth in subparagraphs (A) and (B) applies.

(3) The exemption provided in this subsection does not apply to any subsequent uses by users other than such library or archives.

(i) The rights of reproduction and distribution under this section do not apply to a musical work, a pictorial, graphic or sculptural work, or a motion picture or other audiovisual work other than an audiovisual work dealing with news, except

that no such limitation shall apply with respect to rights granted by subsections (b), (c), and (h), or with respect to pictorial or graphic works published as illustrations, diagrams, or similar adjuncts to works of which copies are reproduced or distributed in accordance with subsections (d) and (e).

§109 · Limitations on exclusive rights: Effect of transfer of particular copy or phonorecord[43]

(a) Notwithstanding the provisions of section 106(3), the owner of a particular copy or phonorecord lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord. Notwithstanding the preceding sentence, copies or phonorecords of works subject to restored copyright under section 104A that are manufactured before the date of restoration of copyright or, with respect to reliance parties, before publication or service of notice under section 104A(e), may be sold or otherwise disposed of without the authorization of the owner of the restored copyright for purposes of direct or indirect commercial advantage only during the 12-month period beginning on—

(1) the date of the publication in the Federal Register of the notice of intent filed with the Copyright Office under section 104A(d)(2)(A), or

(2) the date of the receipt of actual notice served under section 104A(d)(2)(B), whichever occurs first.

(b)(1)(A) Notwithstanding the provisions of subsection (a), unless authorized by the owners of copyright in the sound recording or the owner of copyright in a computer program (including any tape, disk, or other medium embodying such program), and in the case of a sound recording in the musical works embodied therein, neither the owner of a particular phonorecord nor any person in possession of a particular copy of a computer program (including any tape, disk, or other medium embodying such program), may, for the purposes of direct or indirect commercial advantage, dispose of, or authorize the disposal of, the possession of that phonorecord or computer program (including any tape, disk, or other medium embodying such program) by rental, lease, or lending, or by any other act or practice in the nature of rental, lease, or lending. Nothing in the preceding sentence shall apply to the rental, lease, or lending of a phonorecord for nonprofit purposes by a nonprofit library or nonprofit educational institution. The transfer of possession of a lawfully made copy of a computer program by a nonprofit educational institution to another nonprofit educational institution or to faculty, staff, and students does not constitute rental, lease, or lending for direct or indirect commercial purposes under this subsection.

(B) This subsection does not apply to—

(i) a computer program which is embodied in a machine or product and which cannot be copied during the ordinary operation or use of the machine or product; or

(ii) a computer program embodied in or used in conjunction with a limited purpose computer that is designed for playing video games and may be designed for other purposes.

(C) Nothing in this subsection affects any provision of chapter 9 of this title.

(2)(A) Nothing in this subsection shall apply to the lending of a computer program for nonprofit purposes by a nonprofit library, if each copy of a computer program which is lent by such library has affixed to the packaging containing the program a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

(B) Not later than three years after the date of the enactment of the Computer Software Rental Amendments Act of 1990, and at such times thereafter as the Register of Copyrights considers appropriate, the Register of Copyrights, after consultation with representatives of copyright owners and librarians, shall submit to the Congress a report stating whether this paragraph has achieved its intended purpose of maintaining the integrity of the copyright system while providing nonprofit libraries the capability to fulfill their function. Such report shall advise the Congress as to any information or recommendations that the Register of Copyrights considers necessary to carry out the purposes of this subsection.

(3) Nothing in this subsection shall affect any provision of the antitrust laws. For purposes of the preceding sentence, "antitrust laws" has the meaning given that term in the first section of the Clayton Act and includes section 5 of the Federal Trade Commission Act to the extent that section relates to unfair methods of competition.

(4) Any person who distributes a phonorecord or a copy of a computer program (including any tape, disk, or other medium embodying such program) in violation of paragraph (1) is an infringer of copyright under section 501 of this title and is subject to the remedies set forth in sections 502, 503, 504, and 505. Such violation shall not be a criminal offense under section 506 or cause such person to be subject to the criminal penalties set forth in section 2319 of title 18.

(c) Notwithstanding the provisions of section 106(5), the owner of a particular copy lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to display that copy publicly, either directly or by the projection of no more than one image at a time, to viewers present at the place where the copy is located.

(d) The privileges prescribed by subsections (a) and (c) do not, unless authorized by the copyright owner, extend to any person who has acquired possession

of the copy or phonorecord from the copyright owner, by rental, lease, loan, or otherwise, without acquiring ownership of it.

(e) Notwithstanding the provisions of sections 106(4) and 106(5), in the case of an electronic audiovisual game intended for use in coin-operated equipment, the owner of a particular copy of such a game lawfully made under this title, is entitled, without the authority of the copyright owner of the game, to publicly perform or display that game in coin-operated equipment, except that this subsection shall not apply to any work of authorship embodied in the audiovisual game if the copyright owner of the electronic audiovisual game is not also the copyright owner of the work of authorship.

§ 110 · Limitations on exclusive rights: Exemption of certain performances and displays[44]

Notwithstanding the provisions of section 106, the following are not infringements of copyright:

(1) performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made;

(2) except with respect to a work produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks, or a performance or display that is given by means of a copy or phonorecord that is not lawfully made and acquired under this title, and the transmitting government body or accredited nonprofit educational institution knew or had reason to believe was not lawfully made and acquired, the performance of a nondramatic literary or musical work or reasonable and limited portions of any other work, or display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session, by or in the course of a transmission, if—

(A) the performance or display is made by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of the systematic mediated instructional activities of a governmental body or an accredited nonprofit educational institution;

(B) the performance or display is directly related and of material assistance to the teaching content of the transmission;

(C) the transmission is made solely for, and, to the extent technologically feasible, the reception of such transmission is limited to—

(i) students officially enrolled in the course for which the transmission is made; or

(ii) officers or employees of governmental bodies as a part of their official duties or employment; and

(D) the transmitting body or institution—

(i) institutes policies regarding copyright, provides informational materials to faculty, students, and relevant staff members that accurately describe, and promote compliance with, the laws of the United States relating to copyright, and provides notice to students that materials used in connection with the course may be subject to copyright protection; and

(ii) in the case of digital transmissions—

(I) applies technological measures that reasonably prevent—

(aa) retention of the work in accessible form by recipients of the transmission from the transmitting body or institution for longer than the class session; and

(bb) unauthorized further dissemination of the work in accessible form by such recipients to others; and

(II) does not engage in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent such retention or unauthorized further dissemination;

(3) performance of a nondramatic literary or musical work or of a dramatico-musical work of a religious nature, or display of a work, in the course of services at a place of worship or other religious assembly;

(4) performance of a nondramatic literary or musical work otherwise than in a transmission to the public, without any purpose of direct or indirect commercial advantage and without payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers, if—

(A) there is no direct or indirect admission charge; or

(B) the proceeds, after deducting the reasonable costs of producing the performance, are used exclusively for educational, religious, or charitable purposes and not for private financial gain, except where the copyright owner has served notice of objection to the performance under the following conditions:

(i) the notice shall be in writing and signed by the copyright owner or such owner's duly authorized agent; and

(ii) the notice shall be served on the person responsible for the performance at least seven days before the date of the performance, and shall state the reasons for the objection; and

(iii) the notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation;

(5)(A) except as provided in subparagraph (B), communication of a transmission embodying a performance or display of a work by the public reception of the transmission on a single receiving apparatus of a kind commonly used in private homes, unless—

(i) a direct charge is made to see or hear the transmission; or

(ii) the transmission thus received is further transmitted to the public;

(B) communication by an establishment of a transmission or retransmission embodying a performance or display of a nondramatic musical work intended to be received by the general public, originated by a radio or television broadcast station licensed as such by the Federal Communications Commission, or, if an audiovisual transmission, by a cable system or satellite carrier, if—

(i) in the case of an establishment other than a food service or drinking establishment, either the establishment in which the communication occurs has less than 2,000 gross square feet of space (excluding space used for customer parking and for no other purpose), or the establishment in which the communication occurs has 2,000 or more gross square feet of space (excluding space used for customer parking and for no other purpose) and—

(I) if the performance is by audio means only, the performance is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space; or

(II) if the performance or display is by audiovisual means, any visual portion of the performance or display is communicated by means of a total of not more than 4 audiovisual devices, of which not more than 1 audiovisual device is located in any 1 room, and no such audiovisual device has a diagonal screen size greater than 55 inches, and any audio portion of the performance or display is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space;

(ii) in the case of a food service or drinking establishment, either the establishment in which the communication occurs has less than 3,750 gross square feet of space (excluding space used for customer parking and for no other purpose), or the establishment in which the communication occurs has 3,750 gross square feet of space or more (excluding space used for customer parking and for no other purpose) and—

(I) if the performance is by audio means only, the performance is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space; or

(II) if the performance or display is by audiovisual means, any visual portion of the performance or display is communicated by means of a total of not more than 4 audiovisual devices, of which not more than 1 audiovisual device is located in any 1 room, and no such audiovisual device has a diagonal screen size greater than 55 inches, and any audio portion of the performance or display is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space;

(iii) no direct charge is made to see or hear the transmission or retransmission;

(iv) the transmission or retransmission is not further transmitted beyond the establishment where it is received; and

(v) the transmission or retransmission is licensed by the copyright owner of the work so publicly performed or displayed;

(6) performance of a nondramatic musical work by a governmental body or a nonprofit agricultural or horticultural organization, in the course of an annual agricultural or horticultural fair or exhibition conducted by such body or organization; the exemption provided by this clause shall extend to any liability for copyright infringement that would otherwise be imposed on such body or organization, under doctrines of vicarious liability or related infringement, for a performance by a concessionaire, business establishment, or other person at such fair or exhibition, but shall not excuse any such person from liability for the performance;

(7) performance of a nondramatic musical work by a vending establishment open to the public at large without any direct or indirect admission charge, where the sole purpose of the performance is to promote the retail sale of copies or phonorecords of the work, or of the audiovisual or other devices utilized in such performance, and the performance is not transmitted beyond the place where the establishment is located and is within the immediate area where the sale is occurring;

(8) performance of a nondramatic literary work, by or in the course of a transmission specifically designed for and primarily directed to blind or other handicapped persons who are unable to read normal printed material as a result of their handicap, or deaf or other handicapped persons who are unable to hear the aural signals accompanying a transmission of visual signals, if the performance is made without any purpose of direct or indirect commercial advantage and its transmission is made through the facilities of: (i) a governmental body; or (ii) a noncommercial educational broadcast station

(as defined in section 397 of title 47); or (iii) a radio subcarrier authorization (as defined in 47 CFR 73.293–73.295 and 73.593–73.595); or (iv) a cable system (as defined in section 111 (f));

(9) performance on a single occasion of a dramatic literary work published at least ten years before the date of the performance, by or in the course of a transmission specifically designed for and primarily directed to blind or other handicapped persons who are unable to read normal printed material as a result of their handicap, if the performance is made without any purpose of direct or indirect commercial advantage and its transmission is made through the facilities of a radio subcarrier authorization referred to in clause (8) (iii), *Provided,* That the provisions of this clause shall not be applicable to more than one performance of the same work by the same performers or under the auspices of the same organization;

(10) notwithstanding paragraph (4), the following is not an infringement of copyright: performance of a nondramatic literary or musical work in the course of a social function which is organized and promoted by a nonprofit veterans' organization or a nonprofit fraternal organization to which the general public is not invited, but not including the invitees of the organizations, if the proceeds from the performance, after deducting the reasonable costs of producing the performance, are used exclusively for charitable purposes and not for financial gain. For purposes of this section the social functions of any college or university fraternity or sorority shall not be included unless the social function is held solely to raise funds for a specific charitable purpose; and

(11) the making imperceptible, by or at the direction of a member of a private household, of limited portions of audio or video content of a motion picture, during a performance in or transmitted to that household for private home viewing, from an authorized copy of the motion picture, or the creation or provision of a computer program or other technology that enables such making imperceptible and that is designed and marketed to be used, at the direction of a member of a private household, for such making imperceptible, if no fixed copy of the altered version of the motion picture is created by such computer program or other technology.

The exemptions provided under paragraph (5) shall not be taken into account in any administrative, judicial, or other governmental proceeding to set or adjust the royalties payable to copyright owners for the public performance or display of their works. Royalties payable to copyright owners for any public performance or display of their works other than such performances or displays as are exempted under paragraph (5) shall not be diminished in any respect as a result of such exemption.

In paragraph (2), the term "mediated instructional activities" with respect to the performance or display of a work by digital transmission under this section refers to activities that use such work as an integral part of the class experience,

controlled by or under the actual supervision of the instructor and analogous to the type of performance or display that would take place in a live classroom setting. The term does not refer to activities that use, in 1 or more class sessions of a single course, such works as textbooks, course packs, or other material in any media, copies or phonorecords of which are typically purchased or acquired by the students in higher education for their independent use and retention or are typically purchased or acquired for elementary and secondary students for their possession and independent use.

For purposes of paragraph (2), accreditation—

(A) with respect to an institution providing post-secondary education, shall be as determined by a regional or national accrediting agency recognized by the Council on Higher Education Accreditation or the United States Department of Education; and

(B) with respect to an institution providing elementary or secondary education, shall be as recognized by the applicable state certification or licensing procedures.

For purposes of paragraph (2), no governmental body or accredited nonprofit educational institution shall be liable for infringement by reason of the transient or temporary storage of material carried out through the automatic technical process of a digital transmission of the performance or display of that material as authorized under paragraph (2). No such material stored on the system or network controlled or operated by the transmitting body or institution under this paragraph shall be maintained on such system or network in a manner ordinarily accessible to anyone other than anticipated recipients. No such copy shall be maintained on the system or network in a manner ordinarily accessible to such anticipated recipients for a longer period than is reasonably necessary to facilitate the transmissions for which it was made.

For purposes of paragraph (11), the term "making imperceptible" does not include the addition of audio or video content that is performed or displayed over or in place of existing content in a motion picture.

Nothing in paragraph (11) shall be construed to imply further rights under section 106 of this title, or to have any effect on defenses or limitations on rights granted under any other section of this title or under any other paragraph of this section.

§ 111 · Limitations on exclusive rights: Secondary transmissions of broadcast programming by cable[45]

(a) Certain Secondary Transmissions Exempted.—The secondary transmission of a performance or display of a work embodied in a primary transmission is not an infringement of copyright if—

(1) the secondary transmission is not made by a cable system, and consists entirely of the relaying, by the management of a hotel, apartment house, or similar establishment, of signals transmitted by a broadcast station licensed by the Federal Communications Commission, within the local service area of such station, to the private lodgings of guests or residents of such establishment, and no direct charge is made to see or hear the secondary transmission; or

(2) the secondary transmission is made solely for the purpose and under the conditions specified by paragraph (2) of section 110; or

(3) the secondary transmission is made by any carrier who has no direct or indirect control over the content or selection of the primary transmission or over the particular recipients of the secondary transmission, and whose activities with respect to the secondary transmission consist solely of providing wires, cables, or other communications channels for the use of others: *Provided,* That the provisions of this paragraph extend only to the activities of said carrier with respect to secondary transmissions and do not exempt from liability the activities of others with respect to their own primary or secondary transmissions;

(4) the secondary transmission is made by a satellite carrier pursuant to a statutory license under section 119 or section 122;

(5) the secondary transmission is not made by a cable system but is made by a governmental body, or other nonprofit organization, without any purpose of direct or indirect commercial advantage, and without charge to the recipients of the secondary transmission other than assessments necessary to defray the actual and reasonable costs of maintaining and operating the secondary transmission service.

(b) Secondary Transmission of Primary Transmission to Controlled Group.—Notwithstanding the provisions of subsections (a) and (c), the secondary transmission to the public of a performance or display of a work embodied in a primary transmission is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, if the primary transmission is not made for reception by the public at large but is controlled and limited to reception by particular members of the public: *Provided*, however, That such secondary transmission is not actionable as an act of infringement if—

(1) the primary transmission is made by a broadcast station licensed by the Federal Communications Commission; and

(2) the carriage of the signals comprising the secondary transmission is required under the rules, regulations, or authorizations of the Federal Communications Commission; and

(3) the signal of the primary transmitter is not altered or changed in any way by the secondary transmitter.

(c) Secondary Transmissions by Cable Systems.—

(1) Subject to the provisions of paragraphs (2), (3), and (4) of this subsection and section 114(d), secondary transmissions to the public by a cable system of a performance or display of a work embodied in a primary transmission made by a broadcast station licensed by the Federal Communications Commission or by an appropriate governmental authority of Canada or Mexico shall be subject to statutory licensing upon compliance with the requirements of subsection (d) where the carriage of the signals comprising the secondary transmission is permissible under the rules, regulations, or authorizations of the Federal Communications Commission.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the willful or repeated secondary transmission to the public by a cable system of a primary transmission made by a broadcast station licensed by the Federal Communications Commission or by an appropriate governmental authority of Canada or Mexico and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, in the following cases:

(A) where the carriage of the signals comprising the secondary transmission is not permissible under the rules, regulations, or authorizations of the Federal Communications Commission; or

(B) where the cable system has not deposited the statement of account and royalty fee required by subsection (d).

(3) Notwithstanding the provisions of paragraph (1) of this subsection and subject to the provisions of subsection (e) of this section, the secondary transmission to the public by a cable system of a performance or display of a work embodied in a primary transmission made by a broadcast station licensed by the Federal Communications Commission or by an appropriate governmental authority of Canada or Mexico is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and section 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcements transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the cable system through changes, deletions, or additions, except for the alteration, deletion, or substitution of commercial advertisements performed by those engaged in television commercial advertising market research: *Provided,* That the research company has obtained the prior consent of the advertiser who has purchased the original commercial advertisement, the television station broadcasting that commercial advertisement, and the cable system performing the secondary transmission: *And provided further*, That such commercial alteration, deletion, or substitution is not performed for the purpose of deriving income from the sale of that commercial time.

(4) Notwithstanding the provisions of paragraph (1) of this subsection, the secondary transmission to the public by a cable system of a performance or display of a work embodied in a primary transmission made by a broadcast station licensed by an appropriate governmental authority of Canada or Mexico is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, if (A) with respect to Canadian signals, the community of the cable system is located more than 150 miles from the United States–Canadian border and is also located south of the forty-second parallel of latitude, or (B) with respect to Mexican signals, the secondary transmission is made by a cable system which received the primary transmission by means other than direct interception of a free space radio wave emitted by such broadcast television station, unless prior to April 15, 1976, such cable system was actually carrying, or was specifically authorized to carry, the signal of such foreign station on the system pursuant to the rules, regulations, or authorizations of the Federal Communications Commission.

(d) Statutory License for Secondary Transmissions by Cable Systems.[46]—

(1) Statement of account and royalty fees.—Subject to paragraph (5), a cable system whose secondary transmissions have been subject to statutory licensing under subsection (c) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall prescribe by regulation the following—

(A) A statement of account, covering the six months next preceding, specifying the number of channels on which the cable system made secondary transmissions to its subscribers, the names and locations of all primary transmitters whose transmissions were further transmitted by the cable system, the total number of subscribers, the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters, and such other data as the Register of Copyrights may from time to time prescribe by regulation. In determining the total number of subscribers and the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters, the cable system shall not include subscribers and amounts collected from subscribers receiving secondary transmissions pursuant to section 119. Such statement shall also include a special statement of account covering any non-network television programming that was carried by the cable system in whole or in part beyond the local service area of the primary transmitter, under rules, regulations, or authorizations of the Federal Communications Commission permitting the substitution or addition of signals under certain circumstances, together with logs showing the times, dates, stations, and programs involved in such substituted or added carriage.

(B) Except in the case of a cable system whose royalty fee is specified in subparagraph (E) or (F), a total royalty fee payable to copyright owners pursuant to paragraph (3) for the period covered by the statement, computed on the basis of specified percentages of the gross receipts from subscribers to the cable service during such period for the basic service of providing secondary transmissions of primary broadcast transmitters, as follows:

(i) 1.064 percent of such gross receipts for the privilege of further transmitting, beyond the local service area of such primary transmitter, any non-network programming of a primary transmitter in whole or in part, such amount to be applied against the fee, if any, payable pursuant to clauses (ii) through (iv);

(ii) 1.064 percent of such gross receipts for the first distant signal equivalent;

(iii) 0.701 percent of such gross receipts for each of the second, third, and fourth distant signal equivalents; and

(iv) 0.330 percent of such gross receipts for the fifth distant signal equivalent and each distant signal equivalent thereafter.

(C) In computing amounts under clauses (ii) through (iv) of subparagraph (B)—

(i) any fraction of a distant signal equivalent shall be computed at its fractional value;

(ii) in the case of any cable system located partly within and partly outside of the local service area of a primary transmitter, gross receipts shall be limited to those gross receipts derived from subscribers located outside of the local service area of such primary transmitter; and

(iii) if a cable system provides a secondary transmission of a primary transmitter to some but not all communities served by that cable system—

(I) the gross receipts and the distant signal equivalent values for such secondary transmission shall be derived solely on the basis of the subscribers in those communities where the cable system provides such secondary transmission; and

(II) the total royalty fee for the period paid by such system shall not be less than the royalty fee calculated under subparagraph (B)(i) multiplied by the gross receipts from all subscribers to the system.

(D) A cable system that, on a statement submitted before the date of the enactment of the Satellite Television Extension and Localism Act of 2010, computed its royalty fee consistent with the methodology under subparagraph (C)(iii), or that amends a statement filed before such date of enactment to compute the royalty fee due using such methodology, shall not be subject to an action for infringement, or eligible for any royalty refund or offset, arising out of its use of such methodology on such statement.

(E) If the actual gross receipts paid by subscribers to a cable system for the period covered by the statement for the basic service of providing secondary transmissions of primary broadcast transmitters are $263,800 or less—

(i) gross receipts of the cable system for the purpose of this paragraph shall be computed by subtracting from such actual gross receipts the amount by which $263,800 exceeds such actual gross receipts, except that in no case shall a cable system's gross receipts be reduced to less than $10,400; and

(ii) the royalty fee payable under this paragraph to copyright owners pursuant to paragraph (3) shall be 0.5 percent, regardless of the number of distant signal equivalents, if any.

(F) If the actual gross receipts paid by subscribers to a cable system for the period covered by the statement for the basic service of providing secondary transmissions of primary broadcast transmitters are more than $263,800 but less than $527,600, the royalty fee payable under this paragraph to copyright owners pursuant to paragraph (3) shall be—

(i) 0.5 percent of any gross receipts up to $263,800, regardless of the number of distant signal equivalents, if any; and

(ii) 1 percent of any gross receipts in excess of $263,800, but less than $527,600, regardless of the number of distant signal equivalents, if any.

(G) A filing fee, as determined by the Register of Copyrights pursuant to section 708(a).

(2) Handling of fees.—The Register of Copyrights shall receive all fees (including the filing fee specified in paragraph (1)(G)) deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section, shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest by the Librarian of Congress upon authorization by the Copyright Royalty Judges.

(3) Distribution of royalty fees to copyright owners.—The royalty fees thus deposited shall, in accordance with the procedures provided by paragraph (4), be distributed to those among the following copyright owners who claim that their works were the subject of secondary transmissions by cable systems during the relevant semiannual period:

(A) Any such owner whose work was included in a secondary transmission made by a cable system of a non-network television program in whole or in part beyond the local service area of the primary transmitter.

(B) Any such owner whose work was included in a secondary transmission identified in a special statement of account deposited under paragraph (1) (A).

(C) Any such owner whose work was included in non-network programming consisting exclusively of aural signals carried by a cable system in whole or in part beyond the local service area of the primary transmitter of such programs.

(4) Procedures for royalty fee distribution.—The royalty fees thus deposited shall be distributed in accordance with the following procedures:

(A) During the month of July in each year, every person claiming to be entitled to statutory license fees for secondary transmissions shall file a claim with the Copyright Royalty Judges, in accordance with requirements that the Copyright Royalty Judges shall prescribe by regulation. Notwithstanding any provisions of the antitrust laws, for purposes of this clause any claimants may agree among themselves as to the proportionate division of statutory licensing fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

(B) After the first day of August of each year, the Copyright Royalty Judges shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Copyright Royalty Judges determine that no such controversy exists, the Copyright Royalty Judges shall authorize the Librarian of Congress to proceed to distribute such fees to the copyright owners entitled to receive them, or to their designated agents, subject to the deduction of reasonable administrative costs under this section. If the Copyright Royalty Judges find the existence of a controversy, the Copyright Royalty Judges shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

(C) During the pendency of any proceeding under this subsection, the Copyright Royalty Judges shall have the discretion to authorize the Librarian of Congress to proceed to distribute any amounts that are not in controversy.

(5) 3.75 percent rate and syndicated exclusivity surcharge not applicable to multicast streams.—The royalty rates specified in sections 256.2(c) and 256.2(d) of title 37, Code of Federal Regulations (commonly referred to as the "3.75 percent rate" and the "syndicated exclusivity surcharge", respectively), as in effect on the date of the enactment of the Satellite Television Extension and Localism Act of 2010, as such rates may be adjusted, or such sections redesignated, thereafter by the Copyright Royalty Judges, shall not apply to the secondary transmission of a multicast stream.

(6) Verification of accounts and fee payments.—The Register of Copyrights shall issue regulations to provide for the confidential verification by copyright owners whose works were embodied in the secondary transmissions of primary transmissions pursuant to this section of the information reported on the semiannual statements of account filed under this subsection

for accounting periods beginning on or after January 1, 2010, in order that the auditor designated under subparagraph (A) is able to confirm the correctness of the calculations and royalty payments reported therein. The regulations shall—

(A) establish procedures for the designation of a qualified independent auditor—

(i) with exclusive authority to request verification of such a statement of account on behalf of all copyright owners whose works were the subject of secondary transmissions of primary transmissions by the cable system (that deposited the statement) during the accounting period covered by the statement; and

(ii) who is not an officer, employee, or agent of any such copyright owner for any purpose other than such audit;

(B) establish procedures for safeguarding all nonpublic financial and business information provided under this paragraph;

(C)(i) require a consultation period for the independent auditor to review its conclusions with a designee of the cable system;

(ii) establish a mechanism for the cable system to remedy any errors identified in the auditor's report and to cure any underpayment identified; and

(iii) provide an opportunity to remedy any disputed facts or conclusions;

(D) limit the frequency of requests for verification for a particular cable system and the number of audits that a multiple system operator can be required to undergo in a single year; and

(E) permit requests for verification of a statement of account to be made only within 3 years after the last day of the year in which the statement of account is filed.

(7) Acceptance of additional deposits.—Any royalty fee payments received by the Copyright Office from cable systems for the secondary transmission of primary transmissions that are in addition to the payments calculated and deposited in accordance with this subsection shall be deemed to have been deposited for the particular accounting period for which they are received and shall be distributed as specified under this subsection.

(e) Nonsimultaneous Secondary Transmissions by Cable Systems.—

(1) Notwithstanding those provisions of the subsection (f)(2) relating to nonsimultaneous secondary transmissions by a cable system, any such transmissions are actionable as an act of infringement under section 501, and are fully subject to the remedies provided by sections 502 through 506 and section 510, unless—

(A) the program on the videotape is transmitted no more than one time to the cable system's subscribers;

(B) the copyrighted program, episode, or motion picture videotape, including the commercials contained within such program, episode, or picture, is transmitted without deletion or editing;

(C) an owner or officer of the cable system

(i) prevents the duplication of the videotape while in the possession of the system,

(ii) prevents unauthorized duplication while in the possession of the facility making the videotape for the system if the system owns or controls the facility, or takes reasonable precautions to prevent such duplication if it does not own or control the facility,

(iii) takes adequate precautions to prevent duplication while the tape is being transported, and

(iv) subject to paragraph (2), erases or destroys, or causes the erasure or destruction of, the videotape;

(D) within forty-five days after the end of each calendar quarter, an owner or officer of the cable system executes an affidavit attesting

(i) to the steps and precautions taken to prevent duplication of the videotape, and

(ii) subject to paragraph (2), to the erasure or destruction of all videotapes made or used during such quarter;

(E) such owner or officer places or causes each such affidavit, and affidavits received pursuant to paragraph (2)(C), to be placed in a file, open to public inspection, at such system's main office in the community where the transmission is made or in the nearest community where such system maintains an office; and

(F) the nonsimultaneous transmission is one that the cable system would be authorized to transmit under the rules, regulations, and authorizations of the Federal Communications Commission in effect at the time of the nonsimultaneous transmission if the transmission had been made simultaneously, except that this subparagraph shall not apply to inadvertent or accidental transmissions.

(2) If a cable system transfers to any person a videotape of a program nonsimultaneously transmitted by it, such transfer is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, except that, pursuant to a written, nonprofit contract providing for the equitable sharing of the costs of such videotape and its transfer, a videotape nonsimultaneously transmitted by it, in accordance with paragraph (1), may be transferred by one cable system in Alaska to another system in Alaska, by one cable system in Hawaii permitted to make such nonsimultaneous transmissions to another such cable system in Hawaii, or by one cable system in Guam, the Northern Mariana Islands, or the

Trust Territory of the Pacific Islands, to another cable system in any of those five entities, if—

(A) each such contract is available for public inspection in the offices of the cable systems involved, and a copy of such contract is filed, within thirty days after such contract is entered into, with the Copyright Office (which Office shall make each such contract available for public inspection); and

(B) the cable system to which the videotape is transferred complies with paragraph (1)(A), (B), (C)(i), (iii), and (iv), and (D) through (F);

(C) such system provides a copy of the affidavit required to be made in accordance with paragraph (1)(D) to each cable system making a previous nonsimultaneous transmission of the same videotape.

(3) This subsection shall not be construed to supersede the exclusivity protection provisions of any existing agreement, or any such agreement hereafter entered into, between a cable system and a television broadcast station in the area in which the cable system is located, or a network with which such station is affiliated.

(4) As used in this subsection, the term "videotape" means the reproduction of the images and sounds of a program or programs broadcast by a television broadcast station licensed by the Federal Communications Commission, regardless of the nature of the material objects, such as tapes or films, in which the reproduction is embodied.

(f) Definitions.—As used in this section, the following terms mean the following:

(1) Primary transmission.—A "primary transmission" is a transmission made to the public by a transmitting facility whose signals are being received and further transmitted by a secondary transmission service, regardless of where or when the performance or display was first transmitted. In the case of a television broadcast station, the primary stream and any multicast streams transmitted by the station constitute primary transmissions.

(2) Secondary transmission.—A "secondary transmission" is the further transmitting of a primary transmission simultaneously with the primary transmission, or nonsimultaneously with the primary transmission if by a cable system not located in whole or in part within the boundary of the forty-eight contiguous States, Hawaii, or Puerto Rico: *Provided, however*, That a nonsimultaneous further transmission by a cable system located in Hawaii of a primary transmission shall be deemed to be a secondary transmission if the carriage of the television broadcast signal comprising such further transmission is permissible under the rules, regulations, or authorizations of the Federal Communications Commission.

(3) Cable system.—A "cable system" is a facility, located in any State, territory, trust territory, or possession of the United States, that in whole or in part receives signals transmitted or programs broadcast by one or more

television broadcast stations licensed by the Federal Communications Commission, and makes secondary transmissions of such signals or programs by wires, cables, microwave, or other communications channels to subscribing members of the public who pay for such service. For purposes of determining the royalty fee under subsection (d)(1), two or more cable systems in contiguous communities under common ownership or control or operating from one headend shall be considered as one system.

(4) Local service area of a primary transmitter.—The "local service area of a primary transmitter", in the case of both the primary stream and any multicast streams transmitted by a primary transmitter that is a television broadcast station, comprises the area where such primary transmitter could have insisted upon its signal being retransmitted by a cable system pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976, or such station's television market as defined in section 76.55(e) of title 47, Code of Federal Regulations (as in effect on September 18, 1993), or any modifications to such television market made, on or after September 18, 1993, pursuant to section 76.55(e) or 76.59 of title 47, Code of Federal Regulations or within the noise-limited contour as defined in 73.622(e)(1) of title 47, Code of Federal Regulations, or in the case of a television broadcast station licensed by an appropriate governmental authority of Canada or Mexico, the area in which it would be entitled to insist upon its signal being retransmitted if it were a television broadcast station subject to such rules, regulations, and authorizations. In the case of a low power television station, as defined by the rules and regulations of the Federal Communications Commission, the "local service area of a primary transmitter" comprises the designated market area, as defined in section 122(j)(2)(C), that encompasses the community of license of such station and any community that is located outside such designated market area that is either wholly or partially within 35 miles of the transmitter site or, in the case of such a station located in a standard metropolitan statistical area which has one of the 50 largest populations of all standard metropolitan statistical areas (based on the 1980 decennial census of population taken by the Secretary of Commerce), wholly or partially within 20 miles of such transmitter site. The "local service area of a primary transmitter", in the case of a radio broadcast station, comprises the primary service area of such station, pursuant to the rules and regulations of the Federal Communications Commission.

(5) Distant signal equivalent.—

(A) In general.—Except as provided under subparagraph (B), a "distant signal equivalent"—

(i) is the value assigned to the secondary transmission of any nonnetwork television programming carried by a cable system in whole or

in part beyond the local service area of the primary transmitter of such programming; and

(ii) is computed by assigning a value of one to each primary stream and to each multicast stream (other than a simulcast) that is an independent station, and by assigning a value of one-quarter to each primary stream and to each multicast stream (other than a simulcast) that is a network station or a noncommercial educational station.

(B) Exceptions. — The values for independent, network, and noncommercial educational stations specified in subparagraph (A) are subject to the following:

(i) Where the rules and regulations of the Federal Communications Commission require a cable system to omit the further transmission of a particular program and such rules and regulations also permit the substitution of another program embodying a performance or display of a work in place of the omitted transmission, or where such rules and regulations in effect on the date of the enactment of the Copyright Act of 1976 permit a cable system, at its election, to effect such omission and substitution of a nonlive program or to carry additional programs not transmitted by primary transmitters within whose local service area the cable system is located, no value shall be assigned for the substituted or additional program.

(ii) Where the rules, regulations, or authorizations of the Federal Communications Commission in effect on the date of the enactment of the Copyright Act of 1976 permit a cable system, at its election, to omit the further transmission of a particular program and such rules, regulations, or authorizations also permit the substitution of another program embodying a performance or display of a work in place of the omitted transmission, the value assigned for the substituted or additional program shall be, in the case of a live program, the value of one full distant signal equivalent multiplied by a fraction that has as its numerator the number of days in the year in which such substitution occurs and as its denominator the number of days in the year.

(iii) In the case of the secondary transmission of a primary transmitter that is a television broadcast station pursuant to the late-night or specialty programming rules of the Federal Communications Commission, or the secondary transmission of a primary transmitter that is a television broadcast station on a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals that it is authorized to carry, the values for independent, network, and noncommercial educational stations set forth in subparagraph (A), as the case may be, shall be multiplied by a fraction that is equal to the ratio of the broadcast

hours of such primary transmitter retransmitted by the cable system to the total broadcast hours of the primary transmitter.

(iv) No value shall be assigned for the secondary transmission of the primary stream or any multicast streams of a primary transmitter that is a television broadcast station in any community that is within the local service area of the primary transmitter.

(6) Network station.—

(A) Treatment of primary stream.—The term "network station" shall be applied to a primary stream of a television broadcast station that is owned or operated by, or affiliated with, one or more of the television networks in the United States providing nationwide transmissions, and that transmits a substantial part of the programming supplied by such networks for a substantial part of the primary stream's typical broadcast day.

(B) Treatment of multicast streams.—The term "network station" shall be applied to a multicast stream on which a television broadcast station transmits all or substantially all of the programming of an interconnected program service that—

(i) is owned or operated by, or affiliated with, one or more of the television networks described in subparagraph (A); and

(ii) offers programming on a regular basis for 15 or more hours per week to at least 25 of the affiliated television licensees of the interconnected program service in 10 or more States.

(7) Independent station.—The term "independent station" shall be applied to the primary stream or a multicast stream of a television broadcast station that is not a network station or a noncommercial educational station.

(8) Noncommercial educational station.—The term "noncommercial educational station" shall be applied to the primary stream or a multicast stream of a television broadcast station that is a noncommercial educational broadcast station as defined in section 397 of the Communications Act of 1934, as in effect on the date of the enactment of the Satellite Television Extension and Localism Act of 2010.

(9) Primary stream.—A "primary stream" is—

(A) the single digital stream of programming that, before June 12, 2009, was substantially duplicating the programming transmitted by the television broadcast station as an analog signal; or

(B) if there is no stream described in subparagraph (A), then the single digital stream of programming transmitted by the television broadcast station for the longest period of time.

(10) Primary transmitter.—A "primary transmitter" is a television or radio broadcast station licensed by the Federal Communications Commission, or by an appropriate governmental authority of Canada or Mexico, that makes primary transmissions to the public.

(11) Multicast stream. — A "multicast stream" is a digital stream of programming that is transmitted by a television broadcast station and is not the station's primary stream.

(12) Simulcast. — A "simulcast" is a multicast stream of a television broadcast station that duplicates the programming transmitted by the primary stream or another multicast stream of such station.

(13) Subscriber; subscribe. —

(A) Subscriber. — The term "subscriber" means a person or entity that receives a secondary transmission service from a cable system and pays a fee for the service, directly or indirectly, to the cable system.

(B) Subscribe. — The term "subscribe" means to elect to become a subscriber.

§ 112 · Limitations on exclusive rights: Ephemeral recordings[47]

(a)(1) Notwithstanding the provisions of section 106, and except in the case of a motion picture or other audiovisual work, it is not an infringement of copyright for a transmitting organization entitled to transmit to the public a performance or display of a work, under a license, including a statutory license under section 114(f), or transfer of the copyright or under the limitations on exclusive rights in sound recordings specified by section 114(a) or for a transmitting organization that is a broadcast radio or television station licensed as such by the Federal Communications Commission and that makes a broadcast transmission of a performance of a sound recording in a digital format on a nonsubscription basis, to make no more than one copy or phonorecord of a particular transmission program embodying the performance or display, if—

(A) the copy or phonorecord is retained and used solely by the transmitting organization that made it, and no further copies or phonorecords are reproduced from it; and

(B) the copy or phonorecord is used solely for the transmitting organization's own transmissions within its local service area, or for purposes of archival preservation or security; and

(C) unless preserved exclusively for archival purposes, the copy or phonorecord is destroyed within six months from the date the transmission program was first transmitted to the public.

(2) In a case in which a transmitting organization entitled to make a copy or phonorecord under paragraph (1) in connection with the transmission to the public of a performance or display of a work is prevented from making such copy or phonorecord by reason of the application by the copyright owner of technical measures that prevent the reproduction of the work, the copyright owner shall make available to the transmitting organization the

necessary means for permitting the making of such copy or phonorecord as permitted under that paragraph, if it is technologically feasible and economically reasonable for the copyright owner to do so. If the copyright owner fails to do so in a timely manner in light of the transmitting organization's reasonable business requirements, the transmitting organization shall not be liable for a violation of section 1201(a)(1) of this title for engaging in such activities as are necessary to make such copies or phonorecords as permitted under paragraph (1) of this subsection.

(b) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a governmental body or other nonprofit organization entitled to transmit a performance or display of a work, under section 110(2) or under the limitations on exclusive rights in sound recordings specified by section 114(a), to make no more than thirty copies or phonorecords of a particular transmission program embodying the performance or display, if—

(1) no further copies or phonorecords are reproduced from the copies or phonorecords made under this clause; and

(2) except for one copy or phonorecord that may be preserved exclusively for archival purposes, the copies or phonorecords are destroyed within seven years from the date the transmission program was first transmitted to the public.

(c) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a governmental body or other nonprofit organization to make for distribution no more than one copy or phonorecord, for each transmitting organization specified in clause (2) of this subsection, of a particular transmission program embodying a performance of a nondramatic musical work of a religious nature, or of a sound recording of such a musical work, if—

(1) there is no direct or indirect charge for making or distributing any such copies or phonorecords; and

(2) none of such copies or phonorecords is used for any performance other than a single transmission to the public by a transmitting organization entitled to transmit to the public a performance of the work under a license or transfer of the copyright; and

(3) except for one copy or phonorecord that may be preserved exclusively for archival purposes, the copies or phonorecords are all destroyed within one year from the date the transmission program was first transmitted to the public.

(d) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a governmental body or other nonprofit organization entitled to transmit a performance of a work under section 110(8) to make no more than ten copies or phonorecords embodying the performance, or to permit the use of any such copy or phonorecord by any governmental body or nonprofit organization entitled to transmit a performance of a work under section 110(8), if—

(1) any such copy or phonorecord is retained and used solely by the organization that made it, or by a governmental body or nonprofit organization entitled to transmit a performance of a work under section 110(8), and no further copies or phonorecords are reproduced from it; and

(2) any such copy or phonorecord is used solely for transmissions authorized under section 110(8), or for purposes of archival preservation or security; and

(3) the governmental body or nonprofit organization permitting any use of any such copy or phonorecord by any governmental body or nonprofit organization under this subsection does not make any charge for such use.

(e) Statutory License.—(1) A transmitting organization entitled to transmit to the public a performance of a sound recording under the limitation on exclusive rights specified by section 114(d)(1)(C)(iv) or under a statutory license in accordance with section 114(f) is entitled to a statutory license, under the conditions specified by this subsection, to make no more than 1 phonorecord of the sound recording (unless the terms and conditions of the statutory license allow for more), if the following conditions are satisfied:

(A) The phonorecord is retained and used solely by the transmitting organization that made it, and no further phonorecords are reproduced from it.

(B) The phonorecord is used solely for the transmitting organization's own transmissions originating in the United States under a statutory license in accordance with section 114(f) or the limitation on exclusive rights specified by section 114(d)(1)(C)(iv).

(C) Unless preserved exclusively for purposes of archival preservation, the phonorecord is destroyed within 6 months from the date the sound recording was first transmitted to the public using the phonorecord.

(D) Phonorecords of the sound recording have been distributed to the public under the authority of the copyright owner or the copyright owner authorizes the transmitting entity to transmit the sound recording, and the transmitting entity makes the phonorecord under this subsection from a phonorecord lawfully made and acquired under the authority of the copyright owner.

(2) Notwithstanding any provision of the antitrust laws, any copyright owners of sound recordings and any transmitting organizations entitled to a statutory license under this subsection may negotiate and agree upon royalty rates and license terms and conditions for making phonorecords of such sound recordings under this section and the proportionate division of fees paid among copyright owners, and may designate common agents to negotiate, agree to, pay, or receive such royalty payments.

(3) Proceedings under chapter 8 shall determine reasonable rates and terms of royalty payments for the activities specified by paragraph (1) during the 5-year period beginning on January 1 of the second year following the year in which the proceedings are to be commenced, or such other period as the

parties may agree. Such rates shall include a minimum fee for each type of service offered by transmitting organizations. Any copyright owners of sound recordings or any transmitting organizations entitled to a statutory license under this subsection may submit to the Copyright Royalty Judges licenses covering such activities with respect to such sound recordings. The parties to each proceeding shall bear their own costs.

(4) The schedule of reasonable rates and terms determined by the Copyright Royalty Judges shall, subject to paragraph (5), be binding on all copyright owners of sound recordings and transmitting organizations entitled to a statutory license under this subsection during the 5-year period specified in paragraph (3), or such other period as the parties may agree. Such rates shall include a minimum fee for each type of service offered by transmitting organizations. The Copyright Royalty Judges shall establish rates that most clearly represent the fees that would have been negotiated in the marketplace between a willing buyer and a willing seller. In determining such rates and terms, the Copyright Royalty Judges shall base their decision on economic, competitive, and programming information presented by the parties, including—

(A) whether use of the service may substitute for or may promote the sales of phonorecords or otherwise interferes with or enhances the copyright owner's traditional streams of revenue; and

(B) the relative roles of the copyright owner and the transmitting organization in the copyrighted work and the service made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, and risk.

In establishing such rates and terms, the Copyright Royalty Judges may consider the rates and terms under voluntary license agreements described in paragraphs (2) and (3). The Copyright Royalty Judges shall also establish requirements by which copyright owners may receive reasonable notice of the use of their sound recordings under this section, and under which records of such use shall be kept and made available by transmitting organizations entitled to obtain a statutory license under this subsection.

(5) License agreements voluntarily negotiated at any time between 1 or more copyright owners of sound recordings and 1 or more transmitting organizations entitled to obtain a statutory license under this subsection shall be given effect in lieu of any decision by the Librarian of Congress or determination by the Copyright Royalty Judges.

(6)(A) Any person who wishes to make a phonorecord of a sound recording under a statutory license in accordance with this subsection may do so without infringing the exclusive right of the copyright owner of the sound recording under section 106(1)—

(i) by complying with such notice requirements as the Copyright Royalty Judges shall prescribe by regulation and by paying royalty fees in accordance with this subsection; or

(ii) if such royalty fees have not been set, by agreeing to pay such royalty fees as shall be determined in accordance with this subsection.

(B) Any royalty payments in arrears shall be made on or before the 20th day of the month next succeeding the month in which the royalty fees are set.

(7) If a transmitting organization entitled to make a phonorecord under this subsection is prevented from making such phonorecord by reason of the application by the copyright owner of technical measures that prevent the reproduction of the sound recording, the copyright owner shall make available to the transmitting organization the necessary means for permitting the making of such phonorecord as permitted under this subsection, if it is technologically feasible and economically reasonable for the copyright owner to do so. If the copyright owner fails to do so in a timely manner in light of the transmitting organization's reasonable business requirements, the transmitting organization shall not be liable for a violation of section 1201(a)(1) of this title for engaging in such activities as are necessary to make such phonorecords as permitted under this subsection.

(8) Nothing in this subsection annuls, limits, impairs, or otherwise affects in any way the existence or value of any of the exclusive rights of the copyright owners in a sound recording, except as otherwise provided in this subsection, or in a musical work, including the exclusive rights to reproduce and distribute a sound recording or musical work, including by means of a digital phonorecord delivery, under section 106(1), 106(3), and 115, and the right to perform publicly a sound recording or musical work, including by means of a digital audio transmission, under sections 106(4) and 106(6).

(f)(1) Notwithstanding the provisions of section 106, and without limiting the application of subsection (b), it is not an infringement of copyright for a governmental body or other nonprofit educational institution entitled under section 110(2) to transmit a performance or display to make copies or phonorecords of a work that is in digital form and, solely to the extent permitted in paragraph (2), of a work that is in analog form, embodying the performance or display to be used for making transmissions authorized under section 110(2), if—

(A) such copies or phonorecords are retained and used solely by the body or institution that made them, and no further copies or phonorecords are reproduced from them, except as authorized under section 110(2); and

(B) such copies or phonorecords are used solely for transmissions authorized under section 110(2).

(2) This subsection does not authorize the conversion of print or other analog versions of works into digital formats, except that such conversion is

permitted hereunder, only with respect to the amount of such works authorized to be performed or displayed under section 110(2), if—

(A) no digital version of the work is available to the institution; or

(B) the digital version of the work that is available to the institution is subject to technological protection measures that prevent its use for section 110(2).

(g) The transmission program embodied in a copy or phonorecord made under this section is not subject to protection as a derivative work under this title except with the express consent of the owners of copyright in the preexisting works employed in the program.

§ 113 · Scope of exclusive rights in pictorial, graphic, and sculptural works[48]

(a) Subject to the provisions of subsections (b) and (c) of this section, the exclusive right to reproduce a copyrighted pictorial, graphic, or sculptural work in copies under section 106 includes the right to reproduce the work in or on any kind of article, whether useful or otherwise.

(b) This title does not afford, to the owner of copyright in a work that portrays a useful article as such, any greater or lesser rights with respect to the making, distribution, or display of the useful article so portrayed than those afforded to such works under the law, whether title 17 or the common law or statutes of a State, in effect on December 31, 1977, as held applicable and construed by a court in an action brought under this title.

(c) In the case of a work lawfully reproduced in useful articles that have been offered for sale or other distribution to the public, copyright does not include any right to prevent the making, distribution, or display of pictures or photographs of such articles in connection with advertisements or commentaries related to the distribution or display of such articles, or in connection with news reports.

(d)(1) In a case in which—

(A) a work of visual art has been incorporated in or made part of a building in such a way that removing the work from the building will cause the destruction, distortion, mutilation, or other modification of the work as described in section 106A(a)(3), and

(B) the author consented to the installation of the work in the building either before the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, or in a written instrument executed on or after such effective date that is signed by the owner of the building and the author and that specifies that installation of the work may subject the work to destruction, distortion, mutilation, or other modification, by reason of its removal,

then the rights conferred by paragraphs (2) and (3) of section 106A(a) shall not apply.

(2) If the owner of a building wishes to remove a work of visual art which is a part of such building and which can be removed from the building without the destruction, distortion, mutilation, or other modification of the work as described in section 106A(a)(3), the author's rights under paragraphs (2) and (3) of section 106A(a) shall apply unless—

(A) the owner has made a diligent, good faith attempt without success to notify the author of the owner's intended action affecting the work of visual art, or

(B) the owner did provide such notice in writing and the person so notified failed, within 90 days after receiving such notice, either to remove the work or to pay for its removal.

For purposes of subparagraph (A), an owner shall be presumed to have made a diligent, good faith attempt to send notice if the owner sent such notice by registered mail to the author at the most recent address of the author that was recorded with the Register of Copyrights pursuant to paragraph (3). If the work is removed at the expense of the author, title to that copy of the work shall be deemed to be in the author.

(3) The Register of Copyrights shall establish a system of records whereby any author of a work of visual art that has been incorporated in or made part of a building, may record his or her identity and address with the Copyright Office. The Register shall also establish procedures under which any such author may update the information so recorded, and procedures under which owners of buildings may record with the Copyright Office evidence of their efforts to comply with this subsection.

§ 114 · Scope of exclusive rights in sound recordings[49]

(a) The exclusive rights of the owner of copyright in a sound recording are limited to the rights specified by clauses (1), (2), (3) and (6) of section 106, and do not include any right of performance under section 106(4).

(b) The exclusive right of the owner of copyright in a sound recording under clause (1) of section 106 is limited to the right to duplicate the sound recording in the form of phonorecords or copies that directly or indirectly recapture the actual sounds fixed in the recording. The exclusive right of the owner of copyright in a sound recording under clause (2) of section 106 is limited to the right to prepare a derivative work in which the actual sounds fixed in the sound recording are rearranged, remixed, or otherwise altered in sequence or quality. The exclusive rights of the owner of copyright in a sound recording under clauses (1) and (2) of section 106 do not extend to the making or duplication of another sound recording that

consists entirely of an independent fixation of other sounds, even though such sounds imitate or simulate those in the copyrighted sound recording. The exclusive rights of the owner of copyright in a sound recording under clauses (1), (2), and (3) of section 106 do not apply to sound recordings included in educational television and radio programs (as defined in section 397 of title 47) distributed or transmitted by or through public broadcasting entities (as defined by section 118(f)): *Provided*, That copies or phonorecords of said programs are not commercially distributed by or through public broadcasting entities to the general public.

(c) This section does not limit or impair the exclusive right to perform publicly, by means of a phonorecord, any of the works specified by section 106(4).

(d) Limitations on Exclusive Right.—Notwithstanding the provisions of section 106(6)—

(1) Exempt transmissions and retransmissions.—The performance of a sound recording publicly by means of a digital audio transmission, other than as a part of an interactive service, is not an infringement of section 106(6) if the performance is part of—

(A) a nonsubscription broadcast transmission;

(B) a retransmission of a nonsubscription broadcast transmission: Provided, That, in the case of a retransmission of a radio station's broadcast transmission—

(i) the radio station's broadcast transmission is not willfully or repeatedly retransmitted more than a radius of 150 miles from the site of the radio broadcast transmitter, however—

(I) the 150 mile limitation under this clause shall not apply when a nonsubscription broadcast transmission by a radio station licensed by the Federal Communications Commission is retransmitted on a nonsubscription basis by a terrestrial broadcast station, terrestrial translator, or terrestrial repeater licensed by the Federal Communications Commission; and

(II) in the case of a subscription retransmission of a nonsubscription broadcast retransmission covered by subclause (I), the 150 mile radius shall be measured from the transmitter site of such broadcast retransmitter;

(ii) the retransmission is of radio station broadcast transmissions that are—

(I) obtained by the retransmitter over the air;

(II) not electronically processed by the retransmitter to deliver separate and discrete signals; and

(III) retransmitted only within the local communities served by the retransmitter;

(iii) the radio station's broadcast transmission was being retransmitted to cable systems (as defined in section 111(f)) by a satellite carrier

on January 1, 1995, and that retransmission was being retransmitted by cable systems as a separate and discrete signal, and the satellite carrier obtains the radio station's broadcast transmission in an analog format: *Provided*, That the broadcast transmission being retransmitted may embody the programming of no more than one radio station; or

(iv) the radio station's broadcast transmission is made by a noncommercial educational broadcast station funded on or after January 1, 1995, under section 396(k) of the Communications Act of 1934 (47 U.S.C. 396(k)), consists solely of noncommercial educational and cultural radio programs, and the retransmission, whether or not simultaneous, is a nonsubscription terrestrial broadcast retransmission; or

(C) a transmission that comes within any of the following categories—

(i) a prior or simultaneous transmission incidental to an exempt transmission, such as a feed received by and then retransmitted by an exempt transmitter: Provided, That such incidental transmissions do not include any subscription transmission directly for reception by members of the public;

(ii) a transmission within a business establishment, confined to its premises or the immediately surrounding vicinity;

(iii) a retransmission by any retransmitter, including a multichannel video programming distributor as defined in section 602(12) of the Communications Act of 1934 (47 U.S.C. 522 (12)), of a transmission by a transmitter licensed to publicly perform the sound recording as a part of that transmission, if the retransmission is simultaneous with the licensed transmission and authorized by the transmitter; or

(iv) a transmission to a business establishment for use in the ordinary course of its business: Provided, That the business recipient does not retransmit the transmission outside of its premises or the immediately surrounding vicinity, and that the transmission does not exceed the sound recording performance complement. Nothing in this clause shall limit the scope of the exemption in clause (ii).

(2) Statutory licensing of certain transmissions.—The performance of a sound recording publicly by means of a subscription digital audio transmission not exempt under paragraph (1), an eligible nonsubscription transmission, or a transmission not exempt under paragraph (1) that is made by a preexisting satellite digital audio radio service shall be subject to statutory licensing, in accordance with subsection (f) if—

(A)(i) the transmission is not part of an interactive service;

(ii) except in the case of a transmission to a business establishment, the transmitting entity does not automatically and intentionally cause any device receiving the transmission to switch from one program channel to another; and

(iii) except as provided in section 1002(e), the transmission of the sound recording is accompanied, if technically feasible, by the information encoded in that sound recording, if any, by or under the authority of the copyright owner of that sound recording, that identifies the title of the sound recording, the featured recording artist who performs on the sound recording, and related information, including information concerning the underlying musical work and its writer;

(B) in the case of a subscription transmission not exempt under paragraph (1) that is made by a preexisting subscription service in the same transmission medium used by such service on July 31, 1998, or in the case of a transmission not exempt under paragraph (1) that is made by a preexisting satellite digital audio radio service—

(i) the transmission does not exceed the sound recording performance complement; and

(ii) the transmitting entity does not cause to be published by means of an advance program schedule or prior announcement the titles of the specific sound recordings or phonorecords embodying such sound recordings to be transmitted; and

(C) in the case of an eligible nonsubscription transmission or a subscription transmission not exempt under paragraph (1) that is made by a new subscription service or by a preexisting subscription service other than in the same transmission medium used by such service on July 31, 1998—

(i) the transmission does not exceed the sound recording performance complement, except that this requirement shall not apply in the case of a retransmission of a broadcast transmission if the retransmission is made by a transmitting entity that does not have the right or ability to control the programming of the broadcast station making the broadcast transmission, unless—

(I) the broadcast station makes broadcast transmissions—

(aa) in digital format that regularly exceed the sound recording performance complement; or

(bb) in analog format, a substantial portion of which, on a weekly basis, exceed the sound recording performance complement; and

(II) the sound recording copyright owner or its representative has notified the transmitting entity in writing that broadcast transmissions of the copyright owner's sound recordings exceed the sound recording performance complement as provided in this clause;

(ii) the transmitting entity does not cause to be published, or induce or facilitate the publication, by means of an advance program schedule or prior announcement, the titles of the specific sound recordings to be transmitted, the phonorecords embodying such sound recordings, or,

other than for illustrative purposes, the names of the featured recording artists, except that this clause does not disqualify a transmitting entity that makes a prior announcement that a particular artist will be featured within an unspecified future time period, and in the case of a retransmission of a broadcast transmission by a transmitting entity that does not have the right or ability to control the programming of the broadcast transmission, the requirement of this clause shall not apply to a prior oral announcement by the broadcast station, or to an advance program schedule published, induced, or facilitated by the broadcast station, if the transmitting entity does not have actual knowledge and has not received written notice from the copyright owner or its representative that the broadcast station publishes or induces or facilitates the publication of such advance program schedule, or if such advance program schedule is a schedule of classical music programming published by the broadcast station in the same manner as published by that broadcast station on or before September 30, 1998;

(iii) the transmission—

(I) is not part of an archived program of less than 5 hours duration;

(II) is not part of an archived program of 5 hours or greater in duration that is made available for a period exceeding 2 weeks;

(III) is not part of a continuous program which is of less than 3 hours duration; or

(IV) is not part of an identifiable program in which performances of sound recordings are rendered in a predetermined order, other than an archived or continuous program, that is transmitted at—

(aa) more than 3 times in any 2-week period that have been publicly announced in advance, in the case of a program of less than 1 hour in duration, or

(bb) more than 4 times in any 2-week period that have been publicly announced in advance, in the case of a program of 1 hour or more in duration, except that the requirement of this subclause shall not apply in the case of a retransmission of a broadcast transmission by a transmitting entity that does not have the right or ability to control the programming of the broadcast transmission, unless the transmitting entity is given notice in writing by the copyright owner of the sound recording that the broadcast station makes broadcast transmissions that regularly violate such requirement;

(iv) the transmitting entity does not knowingly perform the sound recording, as part of a service that offers transmissions of visual images contemporaneously with transmissions of sound recordings, in a

manner that is likely to cause confusion, to cause mistake, or to deceive, as to the affiliation, connection, or association of the copyright owner or featured recording artist with the transmitting entity or a particular product or service advertised by the transmitting entity, or as to the origin, sponsorship, or approval by the copyright owner or featured recording artist of the activities of the transmitting entity other than the performance of the sound recording itself;

(v) the transmitting entity cooperates to prevent, to the extent feasible without imposing substantial costs or burdens, a transmission recipient or any other person or entity from automatically scanning the transmitting entity's transmissions alone or together with transmissions by other transmitting entities in order to select a particular sound recording to be transmitted to the transmission recipient, except that the requirement of this clause shall not apply to a satellite digital audio service that is in operation, or that is licensed by the Federal Communications Commission, on or before July 31, 1998;

(vi) the transmitting entity takes no affirmative steps to cause or induce the making of a phonorecord by the transmission recipient, and if the technology used by the transmitting entity enables the transmitting entity to limit the making by the transmission recipient of phonorecords of the transmission directly in a digital format, the transmitting entity sets such technology to limit such making of phonorecords to the extent permitted by such technology;

(vii) phonorecords of the sound recording have been distributed to the public under the authority of the copyright owner or the copyright owner authorizes the transmitting entity to transmit the sound recording, and the transmitting entity makes the transmission from a phonorecord lawfully made under the authority of the copyright owner, except that the requirement of this clause shall not apply to a retransmission of a broadcast transmission by a transmitting entity that does not have the right or ability to control the programming of the broadcast transmission, unless the transmitting entity is given notice in writing by the copyright owner of the sound recording that the broadcast station makes broadcast transmissions that regularly violate such requirement;

(viii) the transmitting entity accommodates and does not interfere with the transmission of technical measures that are widely used by sound recording copyright owners to identify or protect copyrighted works, and that are technically feasible of being transmitted by the transmitting entity without imposing substantial costs on the transmitting entity or resulting in perceptible aural or visual degradation of the digital signal, except that the requirement of this clause shall not apply to a satellite digital audio service that is in operation, or that is licensed under

the authority of the Federal Communications Commission, on or before July 31, 1998, to the extent that such service has designed, developed, or made commitments to procure equipment or technology that is not compatible with such technical measures before such technical measures are widely adopted by sound recording copyright owners; and

(ix) the transmitting entity identifies in textual data the sound recording during, but not before, the time it is performed, including the title of the sound recording, the title of the phonorecord embodying such sound recording, if any, and the featured recording artist, in a manner to permit it to be displayed to the transmission recipient by the device or technology intended for receiving the service provided by the transmitting entity, except that the obligation in this clause shall not take effect until 1 year after the date of the enactment of the Digital Millennium Copyright Act and shall not apply in the case of a retransmission of a broadcast transmission by a transmitting entity that does not have the right or ability to control the programming of the broadcast transmission, or in the case in which devices or technology intended for receiving the service provided by the transmitting entity that have the capability to display such textual data are not common in the marketplace.

(3) Licenses for transmissions by interactive services.—

(A) No interactive service shall be granted an exclusive license under section 106(6) for the performance of a sound recording publicly by means of digital audio transmission for a period in excess of 12 months, except that with respect to an exclusive license granted to an interactive service by a licensor that holds the copyright to 1,000 or fewer sound recordings, the period of such license shall not exceed 24 months: Provided, however, That the grantee of such exclusive license shall be ineligible to receive another exclusive license for the performance of that sound recording for a period of 13 months from the expiration of the prior exclusive license.

(B) The limitation set forth in subparagraph (A) of this paragraph shall not apply if—

(i) the licensor has granted and there remain in effect licenses under section 106(6) for the public performance of sound recordings by means of digital audio transmission by at least 5 different interactive services; *Provided*, however, That each such license must be for a minimum of 10 percent of the copyrighted sound recordings owned by the licensor that have been licensed to interactive services, but in no event less than 50 sound recordings; or

(ii) the exclusive license is granted to perform publicly up to 45 seconds of a sound recording and the sole purpose of the performance is to promote the distribution or performance of that sound recording.

(C) Notwithstanding the grant of an exclusive or nonexclusive license of the right of public performance under section 106(6), an interactive service may not publicly perform a sound recording unless a license has been granted for the public performance of any copyrighted musical work contained in the sound recording: Provided, That such license to publicly perform the copyrighted musical work may be granted either by a performing rights society representing the copyright owner or by the copyright owner.

(D) The performance of a sound recording by means of a retransmission of a digital audio transmission is not an infringement of section 106(6) if—

(i) the retransmission is of a transmission by an interactive service licensed to publicly perform the sound recording to a particular member of the public as part of that transmission; and

(ii) the retransmission is simultaneous with the licensed transmission, authorized by the transmitter, and limited to that particular member of the public intended by the interactive service to be the recipient of the transmission.

(E) For the purposes of this paragraph—

(i) a "licensor" shall include the licensing entity and any other entity under any material degree of common ownership, management, or control that owns copyrights in sound recordings; and

(ii) a "performing rights society" is an association or corporation that licenses the public performance of nondramatic musical works on behalf of the copyright owner, such as the American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc.

(4) Rights not otherwise limited.—

(A) Except as expressly provided in this section, this section does not limit or impair the exclusive right to perform a sound recording publicly by means of a digital audio transmission under section 106(6).

(B) Nothing in this section annuls or limits in any way—

(i) the exclusive right to publicly perform a musical work, including by means of a digital audio transmission, under section 106(4);

(ii) the exclusive rights in a sound recording or the musical work embodied therein under sections 106(1), 106(2) and 106(3); or

(iii) any other rights under any other clause of section 106, or remedies available under this title as such rights or remedies exist either before or after the date of enactment of the Digital Performance Right in Sound Recordings Act of 1995.

(C) Any limitations in this section on the exclusive right under section 106(6) apply only to the exclusive right under section 106(6) and not to any other exclusive rights under section 106. Nothing in this section shall be construed to annul, limit, impair or otherwise affect in any way the ability of the owner of a copyright in a sound recording to exercise the rights

under sections 106(1), 106(2) and 106(3), or to obtain the remedies available under this title pursuant to such rights, as such rights and remedies exist either before or after the date of enactment of the Digital Performance Right in Sound Recordings Act of 1995.

(e) Authority for Negotiations.—

(1) Notwithstanding any provision of the antitrust laws, in negotiating statutory licenses in accordance with subsection (f), any copyright owners of sound recordings and any entities performing sound recordings affected by this section may negotiate and agree upon the royalty rates and license terms and conditions for the performance of such sound recordings and the proportionate division of fees paid among copyright owners, and may designate common agents on a nonexclusive basis to negotiate, agree to, pay, or receive payments.

(2) For licenses granted under section 106(6), other than statutory licenses, such as for performances by interactive services or performances that exceed the sound recording performance complement—

(A) copyright owners of sound recordings affected by this section may designate common agents to act on their behalf to grant licenses and receive and remit royalty payments: *Provided*, That each copyright owner shall establish the royalty rates and material license terms and conditions unilaterally, that is, not in agreement, combination, or concert with other copyright owners of sound recordings; and

(B) entities performing sound recordings affected by this section may designate common agents to act on their behalf to obtain licenses and collect and pay royalty fees: *Provided*, That each entity performing sound recordings shall determine the royalty rates and material license terms and conditions unilaterally, that is, not in agreement, combination, or concert with other entities performing sound recordings.

(f) Licenses for Certain Nonexempt Transmissions.—

(1)(A) Proceedings under chapter 8 shall determine reasonable rates and terms of royalty payments for transmissions subject to statutory licensing under subsection (d)(2) during the 5-year period beginning on January 1 of the second year following the year in which the proceedings are to be commenced pursuant to subparagraph (A) or (B) of section 804(b)(3), as the case may be, or such other period as the parties may agree. The parties to each proceeding shall bear their own costs.

(B) The schedule of reasonable rates and terms determined by the Copyright Royalty Judges shall, subject to paragraph (2), be binding on all copyright owners of sound recordings and entities performing sound recordings affected by this paragraph during the 5-year period specified in subparagraph (A), or such other period as the parties may agree. Such rates and terms shall distinguish among the different types of services then in

operation and shall include a minimum fee for each such type of service, such differences to be based on criteria including the quantity and nature of the use of sound recordings and the degree to which use of the service may substitute for or may promote the purchase of phonorecords by consumers. The Copyright Royalty Judges shall establish rates and terms that most clearly represent the rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller. In determining such rates and terms, the Copyright Royalty Judges—

(i) shall base their decision on economic, competitive, and programming information presented by the parties, including—

(I) whether use of the service may substitute for or may promote the sales of phonorecords or otherwise may interfere with or may enhance the sound recording copyright owner's other streams of revenue from the copyright owner's sound recordings; and

(II) the relative roles of the copyright owner and the transmitting entity in the copyrighted work and the service made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, and risk; and

(ii) may consider the rates and terms for comparable types of audio transmission services and comparable circumstances under voluntary license agreements.

(C) The procedures under subparagraphs (A) and (B) shall also be initiated pursuant to a petition filed by any sound recording copyright owner or any transmitting entity indicating that a new type of service on which sound recordings are performed is or is about to become operational, for the purpose of determining reasonable terms and rates of royalty payments with respect to such new type of service for the period beginning with the inception of such new type of service and ending on the date on which the royalty rates and terms for eligible nonsubscription services and new subscription services, or preexisting subscription services and preexisting satellite digital audio radio services, as the case may be, most recently determined under subparagraph (A) or (B) and chapter 8 expire, or such other period as the parties may agree.

(2) License agreements voluntarily negotiated at any time between 1 or more copyright owners of sound recordings and 1 or more entities performing sound recordings shall be given effect in lieu of any decision by the Librarian of Congress or determination by the Copyright Royalty Judges.

(3)(A) The Copyright Royalty Judges shall also establish requirements by which copyright owners may receive reasonable notice of the use of their sound recordings under this section, and under which records of such use shall be kept and made available by entities performing sound recordings. The notice and recordkeeping rules in effect on the day before the effective date of

the Copyright Royalty and Distribution Reform Act of 2004 shall remain in effect unless and until new regulations are promulgated by the Copyright Royalty Judges. If new regulations are promulgated under this subparagraph, the Copyright Royalty Judges shall take into account the substance and effect of the rules in effect on the day before the effective date of the Copyright Royalty and Distribution Reform Act of 2004 and shall, to the extent practicable, avoid significant disruption of the functions of any designated agent authorized to collect and distribute royalty fees.

(B) Any person who wishes to perform a sound recording publicly by means of a transmission eligible for statutory licensing under this subsection may do so without infringing the exclusive right of the copyright owner of the sound recording—

(i) by complying with such notice requirements as the Copyright Royalty Judges shall prescribe by regulation and by paying royalty fees in accordance with this subsection; or

(ii) if such royalty fees have not been set, by agreeing to pay such royalty fees as shall be determined in accordance with this subsection.

(C) Any royalty payments in arrears shall be made on or before the twentieth day of the month next succeeding the month in which the royalty fees are set.

(4)(A) Notwithstanding section 112(e) and the other provisions of this subsection, the receiving agent may enter into agreements for the reproduction and performance of sound recordings under section 112(e) and this section by any 1 or more commercial webcasters or noncommercial webcasters for a period of not more than 11 years beginning on January 1, 2005, that, once published in the Federal Register pursuant to subparagraph (B), shall be binding on all copyright owners of sound recordings and other persons entitled to payment under this section, in lieu of any determination by the Copyright Royalty Judges. Any such agreement for commercial webcasters may include provisions for payment of royalties on the basis of a percentage of revenue or expenses, or both, and include a minimum fee. Any such agreement may include other terms and conditions, including requirements by which copyright owners may receive notice of the use of their sound recordings and under which records of such use shall be kept and made available by commercial webcasters or noncommercial webcasters. The receiving agent shall be under no obligation to negotiate any such agreement. The receiving agent shall have no obligation to any copyright owner of sound recordings or any other person entitled to payment under this section in negotiating any such agreement, and no liability to any copyright owner of sound recordings or any other person entitled to payment under this section for having entered into such agreement.

(B) The Copyright Office shall cause to be published in the Federal Register any agreement entered into pursuant to subparagraph (A). Such

publication shall include a statement containing the substance of subparagraph (C). Such agreements shall not be included in the Code of Federal Regulations. Thereafter, the terms of such agreement shall be available, as an option, to any commercial webcaster or noncommercial webcaster meeting the eligibility conditions of such agreement.

(C) Neither subparagraph (A) nor any provisions of any agreement entered into pursuant to subparagraph (A), including any rate structure, fees, terms, conditions, or notice and recordkeeping requirements set forth therein, shall be admissible as evidence or otherwise taken into account in any administrative, judicial, or other government proceeding involving the setting or adjustment of the royalties payable for the public performance or reproduction in ephemeral phonorecords or copies of sound recordings, the determination of terms or conditions related thereto, or the establishment of notice or recordkeeping requirements by the Copyright Royalty Judges under paragraph (3) or section 112(e)(4). It is the intent of Congress that any royalty rates, rate structure, definitions, terms, conditions, or notice and recordkeeping requirements, included in such agreements shall be considered as a compromise motivated by the unique business, economic and political circumstances of webcasters, copyright owners, and performers rather than as matters that would have been negotiated in the marketplace between a willing buyer and a willing seller, or otherwise meet the objectives set forth in section 801(b). This subparagraph shall not apply to the extent that the receiving agent and a webcaster that is party to an agreement entered into pursuant to subparagraph (A) expressly authorize the submission of the agreement in a proceeding under this subsection.

(D) Nothing in the Webcaster Settlement Act of 2008, the Webcaster Settlement Act of 2009, or any agreement entered into pursuant to subparagraph (A) shall be taken into account by the United States Court of Appeals for the District of Columbia Circuit in its review of the determination by the Copyright Royalty Judges of May 1, 2007, of rates and terms for the digital performance of sound recordings and ephemeral recordings, pursuant to sections 112 and 114.

(E) As used in this paragraph—

(i) the term "noncommercial webcaster" means a webcaster that—

(I) is exempt from taxation under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501);

(II) has applied in good faith to the Internal Revenue Service for exemption from taxation under section 501 of the Internal Revenue Code and has a commercially reasonable expectation that such exemption shall be granted; or

(III) is operated by a State or possession or any governmental entity or subordinate thereof, or by the United States or District of Columbia, for exclusively public purposes;

(ii) the term "receiving agent" shall have the meaning given that term in section 261.2 of title 37, Code of Federal Regulations, as published in the Federal Register on July 8, 2002; and

(iii) the term "webcaster" means a person or entity that has obtained a compulsory license under section 112 or 114 and the implementing regulations therefor.

(F) The authority to make settlements pursuant to subparagraph (A) shall expire at 11:59 p.m. Eastern time on the 30th day after the date of the enactment of the Webcaster Settlement Act of 2009.

(g) Proceeds from Licensing of Transmissions.—

(1) Except in the case of a transmission licensed under a statutory license in accordance with subsection (f) of this section—

(A) a featured recording artist who performs on a sound recording that has been licensed for a transmission shall be entitled to receive payments from the copyright owner of the sound recording in accordance with the terms of the artist's contract; and

(B) a nonfeatured recording artist who performs on a sound recording that has been licensed for a transmission shall be entitled to receive payments from the copyright owner of the sound recording in accordance with the terms of the nonfeatured recording artist's applicable contract or other applicable agreement.

(2) Except as provided for in paragraph (6), a nonprofit collective designated by the Copyright Royalty Judges to distribute receipts from the licensing of transmissions in accordance with subsection (f) shall distribute such receipts as follows:

(A) 50 percent of the receipts shall be paid to the copyright owner of the exclusive right under section 106(6) of this title to publicly perform a sound recording by means of a digital audio transmission.

(B) 2½ percent of the receipts shall be deposited in an escrow account managed by an independent administrator jointly appointed by copyright owners of sound recordings and the American Federation of Musicians (or any successor entity) to be distributed to nonfeatured musicians (whether or not members of the American Federation of Musicians) who have performed on sound recordings.

(C) 2½ percent of the receipts shall be deposited in an escrow account managed by an independent administrator jointly appointed by copyright owners of sound recordings and the American Federation of Television and Radio Artists (or any successor entity) to be distributed to nonfeatured

vocalists (whether or not members of the American Federation of Television and Radio Artists) who have performed on sound recordings.

(D) 45 percent of the receipts shall be paid, on a per sound recording basis, to the recording artist or artists featured on such sound recording (or the persons conveying rights in the artists' performance in the sound recordings).

(3) A nonprofit collective designated by the Copyright Royalty Judges to distribute receipts from the licensing of transmissions in accordance with subsection (f) may deduct from any of its receipts, prior to the distribution of such receipts to any person or entity entitled thereto other than copyright owners and performers who have elected to receive royalties from another designated nonprofit collective and have notified such nonprofit collective in writing of such election, the reasonable costs of such collective incurred after November 1, 1995, in—

(A) the administration of the collection, distribution, and calculation of the royalties;

(B) the settlement of disputes relating to the collection and calculation of the royalties; and

(C) the licensing and enforcement of rights with respect to the making of ephemeral recordings and performances subject to licensing under section 112 and this section, including those incurred in participating in negotiations or arbitration proceedings under section 112 and this section, except that all costs incurred relating to the section 112 ephemeral recordings right may only be deducted from the royalties received pursuant to section 112.

(4) Notwithstanding paragraph (3), any nonprofit collective designated to distribute receipts from the licensing of transmissions in accordance with subsection (f) may deduct from any of its receipts, prior to the distribution of such receipts, the reasonable costs identified in paragraph (3) of such collective incurred after November 1, 1995, with respect to such copyright owners and performers who have entered with such collective a contractual relationship that specifies that such costs may be deducted from such royalty receipts.

(5) Letter of direction.—

(A) In general.—A nonprofit collective designated by the Copyright Royalty Judges to distribute receipts from the licensing of transmissions in accordance with subsection (f) shall adopt and reasonably implement a policy that provides, in circumstances determined by the collective to be appropriate, for acceptance of instructions from a payee identified under subparagraph (A) or (D) of paragraph (2) to distribute, to a producer, mixer, or sound engineer who was part of the creative process that created a sound recording, a portion of the payments to which the payee would otherwise

be entitled from the licensing of transmissions of the sound recording. In this section, such instructions shall be referred to as a "letter of direction".

(B) Acceptance of letter. — To the extent that a collective described in subparagraph (A) accepts a letter of direction under that subparagraph, the person entitled to payment pursuant to the letter of direction shall, during the period in which the letter of direction is in effect and carried out by the collective, be treated for all purposes as the owner of the right to receive such payment, and the payee providing the letter of direction to the collective shall be treated as having no interest in such payment.

(C) Authority of collective. — This paragraph shall not be construed in such a manner so that the collective is not authorized to accept or act upon payment instructions in circumstances other than those to which this paragraph applies.

(6) Sound recordings fixed before november 1, 1995. —

(A) Payment absent letter of direction. — A nonprofit collective designated by the Copyright Royalty Judges to distribute receipts from the licensing of transmissions in accordance with subsection (f) (in this paragraph referred to as the "collective") shall adopt and reasonably implement a policy that provides, in circumstances determined by the collective to be appropriate, for the deduction of 2 percent of all the receipts that are collected from the licensing of transmissions of a sound recording fixed before November 1, 1995, but which is withdrawn from the amount otherwise payable under paragraph (2)(D) to the recording artist or artists featured on the sound recording (or the persons conveying rights in the artists' performance in the sound recording), and the distribution of such amount to 1 or more persons described in subparagraph (B) of this paragraph, after deduction of costs described in paragraph (3) or (4), as applicable, if each of the following requirements is met:

(i) Certification of attempt to obtain a letter of direction. — The person described in subparagraph (B) who is to receive the distribution has certified to the collective, under penalty of perjury, that —

(I) for a period of not less than 120 days, that person made reasonable efforts to contact the artist payee for such sound recording to request and obtain a letter of direction instructing the collective to pay to that person a portion of the royalties payable to the featured recording artist or artists; and

(II) during the period beginning on the date on which that person began the reasonable efforts described in subclause (I) and ending on the date of that person's certification to the collective, the artist payee did not affirm or deny in writing the request for a letter of direction.

(ii) Collective attempt to contact artist.—After receipt of the certification described in clause (i) and for a period of not less than 120 days before the first distribution by the collective to the person described in subparagraph (B), the collective attempts, in a reasonable manner as determined by the collective, to notify the artist payee of the certification made by the person described in subparagraph (B).

(iii) No objection received.—The artist payee does not, as of the date that was 10 business days before the date on which the first distribution is made, submit to the collective in writing an objection to the distribution.

(B) Eligibility for payment.—A person shall be eligible for payment under subparagraph (A) if the person—

(i) is a producer, mixer, or sound engineer of the sound recording;

(ii) has entered into a written contract with a record company involved in the creation or lawful exploitation of the sound recording, or with the recording artist or artists featured on the sound recording (or the persons conveying rights in the artists' performance in the sound recording), under which the person seeking payment is entitled to participate in royalty payments that are based on the exploitation of the sound recording and are payable from royalties otherwise payable to the recording artist or artists featured on the sound recording (or the persons conveying rights in the artists' performance in the sound recording);

(iii) made a creative contribution to the creation of the sound recording; and

(iv) submits to the collective—

(I) a written certification stating, under penalty of perjury, that the person meets the requirements in clauses (i) through (iii); and

(II) a true copy of the contract described in clause (ii).

(C) Multiple certifications.—Subject to subparagraph (D), in a case in which more than 1 person described in subparagraph (B) has met the requirements for a distribution under subparagraph (A) with respect to a sound recording as of the date that is 10 business days before the date on which the distribution is made, the collective shall divide the 2 percent distribution equally among all such persons.

(D) Objection to payment.—Not later than 10 business days after the date on which the collective receives from the artist payee a written objection to a distribution made pursuant to subparagraph (A), the collective shall cease making any further payment relating to such distribution. In any case in which the collective has made 1 or more distributions pursuant to subparagraph (A) to a person described in subparagraph (B) before the date that is 10 business days after the date on which the collective receives

from the artist payee an objection to such distribution, the objection shall not affect that person's entitlement to any distribution made before the collective ceases such distribution under this subparagraph.

(E) Ownership of the right to receive payments. — To the extent that the collective determines that a distribution will be made under subparagraph (A) to a person described in subparagraph (B), such person shall, during the period covered by such distribution, be treated for all purposes as the owner of the right to receive such payments, and the artist payee to whom such payments would otherwise be payable shall be treated as having no interest in such payments.

(F) Artist payee defined. — In this paragraph, the term "artist payee" means a person, other than a person described in subparagraph (B), who owns the right to receive all or part of the receipts payable under paragraph (2)(D) with respect to a sound recording. In a case in which there are multiple artist payees with respect to a sound recording, an objection by 1 such payee shall apply only to that payee's share of the receipts payable under paragraph (2)(D), and shall not preclude payment under subparagraph (A) from the share of an artist payee that does not so object.

(7) Preemption of state property laws. — The holding and distribution of receipts under section 112 and this section by a nonprofit collective designated by the Copyright Royalty Judges in accordance with this subsection and regulations adopted by the Copyright Royalty Judges, or by an independent administrator pursuant to subparagraphs (B) and (C) of section 114(g)(2), shall supersede and preempt any State law (including common law) concerning escheatment or abandoned property, or any analogous provision, that might otherwise apply.

(h) Licensing to Affiliates. —

(1) If the copyright owner of a sound recording licenses an affiliated entity the right to publicly perform a sound recording by means of a digital audio transmission under section 106(6), the copyright owner shall make the licensed sound recording available under section 106(6) on no less favorable terms and conditions to all bona fide entities that offer similar services, except that, if there are material differences in the scope of the requested license with respect to the type of service, the particular sound recordings licensed, the frequency of use, the number of subscribers served, or the duration, then the copyright owner may establish different terms and conditions for such other services.

(2) The limitation set forth in paragraph (1) of this subsection shall not apply in the case where the copyright owner of a sound recording licenses —

(A) an interactive service; or

(B) an entity to perform publicly up to 45 seconds of the sound recording and the sole purpose of the performance is to promote the distribution or performance of that sound recording.

[(i) Repealed.][50]

(j) Definitions.—As used in this section, the following terms have the following meanings:

(1) An "affiliated entity" is an entity engaging in digital audio transmissions covered by section 106(6), other than an interactive service, in which the licensor has any direct or indirect partnership or any ownership interest amounting to 5 percent or more of the outstanding voting or nonvoting stock.

(2) An "archived program" is a predetermined program that is available repeatedly on the demand of the transmission recipient and that is performed in the same order from the beginning, except that an archived program shall not include a recorded event or broadcast transmission that makes no more than an incidental use of sound recordings, as long as such recorded event or broadcast transmission does not contain an entire sound recording or feature a particular sound recording.

(3) A "broadcast" transmission is a transmission made by a terrestrial broadcast station licensed as such by the Federal Communications Commission.

(4) A "continuous program" is a predetermined program that is continuously performed in the same order and that is accessed at a point in the program that is beyond the control of the transmission recipient.

(5) A "digital audio transmission" is a digital transmission as defined in section 101, that embodies the transmission of a sound recording. This term does not include the transmission of any audiovisual work.

(6) An "eligible nonsubscription transmission" is a noninteractive nonsubscription digital audio transmission not exempt under subsection (d)(1) that is made as part of a service that provides audio programming consisting, in whole or in part, of performances of sound recordings, including retransmissions of broadcast transmissions, if the primary purpose of the service is to provide to the public such audio or other entertainment programming, and the primary purpose of the service is not to sell, advertise, or promote particular products or services other than sound recordings, live concerts, or other music-related events.

(7) An "interactive service" is one that enables a member of the public to receive a transmission of a program specially created for the recipient, or on request, a transmission of a particular sound recording, whether or not as part of a program, which is selected by or on behalf of the recipient. The ability of individuals to request that particular sound recordings be performed for reception by the public at large, or in the case of a subscription service, by all subscribers of the service, does not make a service interactive, if the programming on each channel of the service does not substantially consist of

sound recordings that are performed within 1 hour of the request or at a time designated by either the transmitting entity or the individual making such request. If an entity offers both interactive and noninteractive services (either concurrently or at different times), the noninteractive component shall not be treated as part of an interactive service.

(8) A "new subscription service" is a service that performs sound recordings by means of noninteractive subscription digital audio transmissions and that is not a preexisting subscription service or a preexisting satellite digital audio radio service.

(9) A "nonsubscription" transmission is any transmission that is not a subscription transmission.

(10) A "preexisting satellite digital audio radio service" is a subscription satellite digital audio radio service provided pursuant to a satellite digital audio radio service license issued by the Federal Communications Commission on or before July 31, 1998, and any renewal of such license to the extent of the scope of the original license, and may include a limited number of sample channels representative of the subscription service that are made available on a nonsubscription basis in order to promote the subscription service.

(11) A "preexisting subscription service" is a service that performs sound recordings by means of noninteractive audio-only subscription digital audio transmissions, which was in existence and was making such transmissions to the public for a fee on or before July 31, 1998, and may include a limited number of sample channels representative of the subscription service that are made available on a nonsubscription basis in order to promote the subscription service.

(12) A "retransmission" is a further transmission of an initial transmission, and includes any further retransmission of the same transmission. Except as provided in this section, a transmission qualifies as a "retransmission" only if it is simultaneous with the initial transmission. Nothing in this definition shall be construed to exempt a transmission that fails to satisfy a separate element required to qualify for an exemption under section 114(d)(1).

(13) The "sound recording performance complement" is the transmission during any 3-hour period, on a particular channel used by a transmitting entity, of no more than—

(A) 3 different selections of sound recordings from any one phonorecord lawfully distributed for public performance or sale in the United States, if no more than 2 such selections are transmitted consecutively; or

(B) 4 different selections of sound recordings—

(i) by the same featured recording artist; or

(ii) from any set or compilation of phonorecords lawfully distributed together as a unit for public performance or sale in the United States, if no more than three such selections are transmitted consecutively:

Provided, That the transmission of selections in excess of the numerical limits provided for in clauses (A) and (B) from multiple phonorecords shall nonetheless qualify as a sound recording performance complement if the programming of the multiple phonorecords was not willfully intended to avoid the numerical limitations prescribed in such clauses.

(14) A "subscription" transmission is a transmission that is controlled and limited to particular recipients, and for which consideration is required to be paid or otherwise given by or on behalf of the recipient to receive the transmission or a package of transmissions including the transmission.

(15) A "transmission" is either an initial transmission or a retransmission.

§ 115 · Scope of exclusive rights in nondramatic musical works: Compulsory license for making and distributing phonorecords[51]

In the case of nondramatic musical works, the exclusive rights provided by clauses (1) and (3) of section 106, to make and to distribute phonorecords of such works, are subject to compulsory licensing under the conditions specified by this section.

(a) Availability and Scope of Compulsory License in General.—

(1) Eligibility for compulsory license.—

(A) Conditions for compulsory license.—A person may by complying with the provisions of this section obtain a compulsory license to make and distribute phonorecords of a nondramatic musical work, including by means of digital phonorecord delivery. A person may obtain a compulsory license only if the primary purpose in making phonorecords of the musical work is to distribute them to the public for private use, including by means of digital phonorecord delivery, and—

(i) phonorecords of such musical work have previously been distributed to the public in the United States under the authority of the copyright owner of the work, including by means of digital phonorecord delivery; or

(ii) in the case of a digital music provider seeking to make and distribute digital phonorecord deliveries of a sound recording embodying a musical work under a compulsory license for which clause (i) does not apply—

(I) the first fixation of such sound recording was made under the authority of the musical work copyright owner, and the sound recording copyright owner has the authority of the musical work copyright owner to make and distribute digital phonorecord deliveries embodying such work to the public in the United States; and

(II) the sound recording copyright owner, or the authorized distributor of the sound recording copyright owner, has authorized the digital music provider to make and distribute digital phonorecord deliveries of the sound recording to the public in the United States.

(B) Duplication of sound recording.—A person may not obtain a compulsory license for the use of the work in the making of phonorecords duplicating a sound recording fixed by another, including by means of digital phonorecord delivery, unless—

(i) such sound recording was fixed lawfully; and

(ii) the making of the phonorecords was authorized by the owner of the copyright in the sound recording or, if the sound recording was fixed before February 15, 1972, by any person who fixed the sound recording pursuant to an express license from the owner of the copyright in the musical work or pursuant to a valid compulsory license for use of such work in a sound recording.

(2) Musical arrangement.—A compulsory license includes the privilege of making a musical arrangement of the work to the extent necessary to conform it to the style or manner of interpretation of the performance involved, but the arrangement shall not change the basic melody or fundamental character of the work, and shall not be subject to protection as a derivative work under this title, except with the express consent of the copyright owner.

(b) Procedures To Obtain a Compulsory License.—

(1) Phonorecords other than digital phonorecord deliveries.—A person who seeks to obtain a compulsory license under subsection (a) to make and distribute phonorecords of a musical work other than by means of digital phonorecord delivery shall, before, or not later than 30 calendar days after, making, and before distributing, any phonorecord of the work, serve notice of intention to do so on the copyright owner. If the registration or other public records of the Copyright Office do not identify the copyright owner and include an address at which notice can be served, it shall be sufficient to file the notice of intention with the Copyright Office. The notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.

(2) Digital phonorecord deliveries.—A person who seeks to obtain a compulsory license under subsection (a) to make and distribute phonorecords of a musical work by means of digital phonorecord delivery—

(A) prior to the license availability date, shall, before, or not later than 30 calendar days after, first making any such digital phonorecord delivery, serve a notice of intention to do so on the copyright owner (but may not file the notice with the Copyright Office, even if the public records of the Office do not identify the owner or the owner's address), and such notice

shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation; or

(B) on or after the license availability date, shall, before making any such digital phonorecord delivery, follow the procedure described in subsection (d)(2), except as provided in paragraph (3).

(3) Record company individual download licenses. — Notwithstanding paragraph (2)(B), a record company may, on or after the license availability date, obtain an individual download license in accordance with the notice requirements described in paragraph (2)(A) (except for the requirement that notice occur prior to the license availability date). A record company that obtains an individual download license as permitted under this paragraph shall provide statements of account and pay royalties as provided in subsection (c)(2)(I).

(4) Failure to obtain license. —

(A) Phonorecords other than digital phonorecord deliveries. — In the case of phonorecords made and distributed other than by means of digital phonorecord delivery, the failure to serve or file the notice of intention required by paragraph (1) forecloses the possibility of a compulsory license under paragraph (1). In the absence of a voluntary license, the failure to obtain a compulsory license renders the making and distribution of phonorecords actionable as acts of infringement under section 501 and subject to the remedies provided by sections 502 through 506.

(B) Digital phonorecord deliveries. —

(i) In general. — In the case of phonorecords made and distributed by means of digital phonorecord delivery:

(I) The failure to serve the notice of intention required by paragraph (2)(A) or paragraph (3), as applicable, forecloses the possibility of a compulsory license under such paragraph.

(II) The failure to comply with paragraph (2)(B) forecloses the possibility of a blanket license for a period of 3 years after the last calendar day on which the notice of license was required to be submitted to the mechanical licensing collective under such paragraph.

(ii) Effect of failure. — In either case described in subclause (I) or (II) of clause (i), in the absence of a voluntary license, the failure to obtain a compulsory license renders the making and distribution of phonorecords by means of digital phonorecord delivery actionable as acts of infringement under section 501 and subject to the remedies provided by sections 502 through 506.

(c) General Conditions Applicable to Compulsory License. —

(1) Royalty payable under compulsory license.[52] —

(A) Identification requirement. — To be entitled to receive royalties under a compulsory license obtained under subsection (b)(1) the copyright

owner must be identified in the registration or other public records of the Copyright Office. The owner is entitled to royalties for phonorecords made and distributed after being so identified, but is not entitled to recover for any phonorecords previously made and distributed.

(B) Royalty for phonorecords other than digital phonorecord deliveries. — Except as provided by subparagraph (A), for every phonorecord made and distributed under a compulsory license under subsection (a) other than by means of digital phonorecord delivery, with respect to each work embodied in the phonorecord, the royalty shall be the royalty prescribed under subparagraphs (D) through (F), paragraph (2)(A), and chapter 8. For purposes of this subparagraph, a phonorecord is considered "distributed" if the person exercising the compulsory license has voluntarily and permanently parted with its possession.

(C) Royalty for digital phonorecord deliveries. — For every digital phonorecord delivery of a musical work made under a compulsory license under this section, the royalty payable shall be the royalty prescribed under subparagraphs (D) through (F), paragraph (2)(A), and chapter 8.

(D) Authority to negotiate. — Notwithstanding any provision of the antitrust laws, any copyright owners of nondramatic musical works and any persons entitled to obtain a compulsory license under subsection (a) may negotiate and agree upon the terms and rates of royalty payments under this section and the proportionate division of fees paid among copyright owners, and may designate common agents on a nonexclusive basis to negotiate, agree to, pay or receive such royalty payments. Such authority to negotiate the terms and rates of royalty payments includes, but is not limited to, the authority to negotiate the year during which the royalty rates prescribed under this subparagraph, subparagraphs (E) and (F), paragraph (2)(A), and chapter 8 shall next be determined.

(E) Determination of reasonable rates and terms. — Proceedings under chapter 8 shall determine reasonable rates and terms of royalty payments for the activities specified by this section during the period beginning with the effective date of such rates and terms, but not earlier than January 1 of the second year following the year in which the petition requesting the proceeding is filed, and ending on the effective date of successor rates and terms, or such other period as the parties may agree. Any copyright owners of nondramatic musical works and any persons entitled to obtain a compulsory license under subsection (a) may submit to the Copyright Royalty Judges licenses covering such activities. The parties to each proceeding shall bear their own costs.

(F) Schedule of reasonable rates. — The schedule of reasonable rates and terms determined by the Copyright Royalty Judges shall, subject to paragraph (2)(A), be binding on all copyright owners of nondramatic

musical works and persons entitled to obtain a compulsory license under subsection (a) during the period specified in subparagraph (E), such other period as may be determined pursuant to subparagraphs (D) and (E), or such other period as the parties may agree. The Copyright Royalty Judges shall establish rates and terms that most clearly represent the rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller. In determining such rates and terms for digital phonorecord deliveries, the Copyright Royalty Judges shall base their decision on economic, competitive, and programming information presented by the parties, including—

(i) whether use of the compulsory licensee's service may substitute for or may promote the sales of phonorecords or otherwise may interfere with or may enhance the musical work copyright owner's other streams of revenue from its musical works; and

(ii) the relative roles of the copyright owner and the compulsory licensee in the copyrighted work and the service made available to the public with respect to the relative creative contribution, technological contribution, capital investment, cost, and risk.

(2) Additional terms and conditions.—

(A) Voluntary licenses and contractual royalty rates.—

(i) In general.—License agreements voluntarily negotiated at any time between one or more copyright owners of nondramatic musical works and one or more persons entitled to obtain a compulsory license under subsection (a) shall be given effect in lieu of any determination by the Copyright Royalty Judges. Subject to clause (ii), the royalty rates determined pursuant to subparagraphs (E) and (F) of paragraph (1) shall be given effect as to digital phonorecord deliveries in lieu of any contrary royalty rates specified in a contract pursuant to which a recording artist who is the author of a nondramatic musical work grants a license under that person's exclusive rights in the musical work under paragraphs (1) and (3) of section 106 or commits another person to grant a license in that musical work under paragraphs (1) and (3) of section 106, to a person desiring to fix in a tangible medium of expression a sound recording embodying the musical work.

(ii) Applicability.—The second sentence of clause (i) shall not apply to—

(I) a contract entered into on or before June 22, 1995, and not modified thereafter for the purpose of reducing the royalty rates determined pursuant to subparagraphs (E) and (F) of paragraph (1) or of increasing the number of musical works within the scope of the contract covered by the reduced rates, except if a contract entered into on or before June 22, 1995, is modified thereafter for the purpose

of increasing the number of musical works within the scope of the contract, any contrary royalty rates specified in the contract shall be given effect in lieu of royalty rates determined pursuant to subparagraphs (E) and (F) of paragraph (1) for the number of musical works within the scope of the contract as of June 22, 1995; and

(II) a contract entered into after the date that the sound recording is fixed in a tangible medium of expression substantially in a form intended for commercial release, if at the time the contract is entered into, the recording artist retains the right to grant licenses as to the musical work under paragraphs (1) and (3) of section 106.

(B) Sound recording information. — Except as provided in section 1002(e), a digital phonorecord delivery licensed under this paragraph shall be accompanied by the information encoded in the sound recording, if any, by or under the authority of the copyright owner of that sound recording, that identifies the title of the sound recording, the featured recording artist who performs on the sound recording, and related information, including information concerning the underlying musical work and its writer.

(C) Infringement remedies. —

(i) In general. — A digital phonorecord delivery of a sound recording is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506,[53] unless —

(I) the digital phonorecord delivery has been authorized by the sound recording copyright owner; and

(II) the entity making the digital phonorecord delivery has obtained a compulsory license under subsection (a) or has otherwise been authorized by the musical work copyright owner, or by a record company pursuant to an individual download license, to make and distribute phonorecords of each musical work embodied in the sound recording by means of digital phonorecord delivery.

(ii) Other remedies. — Any cause of action under this subparagraph shall be in addition to those available to the owner of the copyright in the nondramatic musical work under subparagraph (J) and section 106(4) and the owner of the copyright in the sound recording under section 106(6).

(D) Liability of sound recording owners. — The liability of the copyright owner of a sound recording for infringement of the copyright in a nondramatic musical work embodied in the sound recording shall be determined in accordance with applicable law, except that the owner of a copyright in a sound recording shall not be liable for a digital phonorecord delivery by a third party if the owner of the copyright in the sound recording does not license the distribution of a phonorecord of the nondramatic musical work.

(E) Recording devices and media.—Nothing in section 1008 shall be construed to prevent the exercise of the rights and remedies allowed by this paragraph, subparagraph (J), and chapter 5 in the event of a digital phonorecord delivery, except that no action alleging infringement of copyright may be brought under this title against a manufacturer, importer or distributor of a digital audio recording device, a digital audio recording medium, an analog recording device, or an analog recording medium, or against a consumer, based on the actions described in such section.

(F) Preservation of rights.—Nothing in this section annuls or limits—

(i) the exclusive right to publicly perform a sound recording or the musical work embodied therein, including by means of a digital transmission, under paragraphs (4) and (6) of section 106;

(ii) except for compulsory licensing under the conditions specified by this section, the exclusive rights to reproduce and distribute the sound recording and the musical work embodied therein under paragraphs (1) and (3) of section 106, including by means of a digital phonorecord delivery; or

(iii) any other rights under any other provision of section 106, or remedies available under this title, as such rights or remedies exist before, on, or after the date of enactment of the Digital Performance Right in Sound Recordings Act of 1995.

(G) Exempt transmissions and retransmissions.—The provisions of this section concerning digital phonorecord deliveries shall not apply to any exempt transmissions or retransmissions under section 114(d)(1). The exemptions created in section 114(d)(1) do not expand or reduce the rights of copyright owners under paragraphs (1) through (5) of section 106 with respect to such transmissions and retransmissions.

(H) Distribution by rental, lease, or lending.—A compulsory license obtained under subsection (b)(1) to make and distribute phonorecords includes the right of the maker of such a phonorecord to distribute or authorize distribution of such phonorecord, other than by means of a digital phonorecord delivery, by rental, lease, or lending (or by acts or practices in the nature of rental, lease, or lending). With respect to each nondramatic musical work embodied in the phonorecord, the royalty shall be a proportion of the revenue received by the compulsory licensee from every such act of distribution of the phonorecord under this clause equal to the proportion of the revenue received by the compulsory licensee from distribution of the phonorecord under subsection (a)(1)(A)(ii)(II) that is payable by a compulsory licensee under that clause and under chapter 8. The Register of Copyrights shall issue regulations to carry out the purpose of this subparagraph.

(I) Payment of royalties and statements of account. — Except as provided in paragraphs (4)(A)(i) and (10)(B) of subsection (d), royalty payments shall be made on or before the twentieth day of each month and shall include all royalties for the month next preceding. Each monthly payment shall be made under oath and shall comply with requirements that the Register of Copyrights shall prescribe by regulation. The Register shall also prescribe regulations under which detailed cumulative annual statements of account, certified by a certified public accountant, shall be filed for every compulsory license under subsection (a). The regulations covering both the monthly and the annual statements of account shall prescribe the form, content, and manner of certification with respect to the number of records made and the number of records distributed.

(J) Notice of default and termination of compulsory license. — In the case of a license obtained under paragraph (1), (2)(A), or (3) of subsection (b), if the copyright owner does not receive the monthly payment and the monthly and annual statements of account when due, the owner may give written notice to the licensee that, unless the default is remedied not later than 30 days after the date on which the notice is sent, the compulsory license will be automatically terminated. Such termination renders either the making or the distribution, or both, of all phonorecords for which the royalty has not been paid, actionable as acts of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506. In the case of a license obtained under subsection (b)(2)(B), license authority under the compulsory license may be terminated as provided in subsection (d)(4)(E).

(d) Blanket License for Digital Uses, Mechanical Licensing Collective, and Digital Licensee Coordinator. —

(1) Blanket license for digital uses. —

(A) In general. — A digital music provider that qualifies for a compulsory license under subsection (a) may, by complying with the terms and conditions of this subsection, obtain a blanket license from copyright owners through the mechanical licensing collective to make and distribute digital phonorecord deliveries of musical works through one or more covered activities.

(B) Included activities. — A blanket license —

(i) covers all musical works (or shares of such works) available for compulsory licensing under this section for purposes of engaging in covered activities, except as provided in subparagraph (C);

(ii) includes the making and distribution of server, intermediate, archival, and incidental reproductions of musical works that are reasonable and necessary for the digital music provider to engage in covered

activities licensed under this subsection, solely for the purpose of engaging in such covered activities; and

(iii) does not cover or include any rights or uses other than those described in clauses (i) and (ii).

(C) Other licenses.—A voluntary license for covered activities entered into by or under the authority of 1 or more copyright owners and 1 or more digital music providers, or authority to make and distribute permanent downloads of a musical work obtained by a digital music provider from a sound recording copyright owner pursuant to an individual download license, shall be given effect in lieu of a blanket license under this subsection with respect to the musical works (or shares thereof) covered by such voluntary license or individual download authority and the following conditions apply:

(i) Where a voluntary license or individual download license applies, the license authority provided under the blanket license shall exclude any musical works (or shares thereof) subject to the voluntary license or individual download license.

(ii) An entity engaged in covered activities under a voluntary license or authority obtained pursuant to an individual download license that is a significant nonblanket licensee shall comply with paragraph (6)(A).

(iii) The rates and terms of any voluntary license shall be subject to the second sentence of clause (i) and clause (ii) of subsection (c)(2)(A) and paragraph (9)(C), as applicable.

(D) Protection against infringement actions.—A digital music provider that obtains and complies with the terms of a valid blanket license under this subsection shall not be subject to an action for infringement of the exclusive rights provided by paragraphs (1) and (3) of section 106 under this title arising from use of a musical work (or share thereof) to engage in covered activities authorized by such license, subject to paragraph (4)(E).

(E) Other requirements and conditions apply.—Except as expressly provided in this subsection, each requirement, limitation, condition, privilege, right, and remedy otherwise applicable to compulsory licenses under this section shall apply to compulsory blanket licenses under this subsection.

(2) Availability of blanket license.—

(A) Procedure for obtaining license.—A digital music provider may obtain a blanket license by submitting a notice of license to the mechanical licensing collective that specifies the particular covered activities in which the digital music provider seeks to engage, as follows:

(i) The notice of license shall comply in form and substance with requirements that the Register of Copyrights shall establish by regulation.

(ii) Unless rejected in writing by the mechanical licensing collective not later than 30 calendar days after the date on which the mechanical licensing collective receives the notice, the blanket license shall be effective as of the date on which the notice of license was sent by the digital music provider, as shown by a physical or electronic record.

(iii) A notice of license may only be rejected by the mechanical licensing collective if—

(I) the digital music provider or notice of license does not meet the requirements of this section or applicable regulations, in which case the requirements at issue shall be specified with reasonable particularity in the notice of rejection; or

(II) the digital music provider has had a blanket license terminated by the mechanical licensing collective during the 3-year period preceding the date on which the mechanical licensing collective receives the notice pursuant to paragraph (4)(E).

(iv) If a notice of license is rejected under clause (iii)(I), the digital music provider shall have 30 calendar days after receipt of the notice of rejection to cure any deficiency and submit an amended notice of license to the mechanical licensing collective. If the deficiency has been cured, the mechanical licensing collective shall so confirm in writing, and the license shall be effective as of the date that the original notice of license was provided by the digital music provider.

(v) A digital music provider that believes a notice of license was improperly rejected by the mechanical licensing collective may seek review of such rejection in an appropriate district court of the United States. The district court shall determine the matter de novo based on the record before the mechanical licensing collective and any additional evidence presented by the parties.

(B) Blanket license effective date.—Blanket licenses shall be made available by the mechanical licensing collective on and after the license availability date. No such license shall be effective prior to the license availability date.

(3) Mechanical licensing collective.—

(A) In general.—The mechanical licensing collective shall be a single entity that—

(i) is a nonprofit entity, not owned by any other entity, that is created by copyright owners to carry out responsibilities under this subsection;

(ii) is endorsed by, and enjoys substantial support from, musical work copyright owners that together represent the greatest percentage of the licensor market for uses of such works in covered activities, as measured over the preceding 3 full calendar years;

(iii) is able to demonstrate to the Register of Copyrights that the entity has, or will have prior to the license availability date, the administrative and technological capabilities to perform the required functions of the mechanical licensing collective under this subsection and that is governed by a board of directors in accordance with subparagraph (D)(i); and

(iv) has been designated by the Register of Copyrights, with the approval of the Librarian of Congress pursuant to section 702, in accordance with subparagraph (B).

(B) Designation of mechanical licensing collective.—

(i) Initial designation.—Not later than 270 days after the enactment date, the Register of Copyrights shall initially designate the mechanical licensing collective as follows:

(I) Not later than 90 calendar days after the enactment date, the Register shall publish notice in the Federal Register soliciting information to assist in identifying the appropriate entity to serve as the mechanical licensing collective, including the name and affiliation of each member of the board of directors described under subparagraph (D)(i) and each committee established pursuant to clauses (iii), (iv), and (v) of subparagraph (D).

(II) After reviewing the information requested under subclause (I) and making a designation, the Register shall publish notice in the Federal Register setting forth—

(aa) the identity of and contact information for the mechanical licensing collective; and

(bb) the reasons for the designation.

(ii) Periodic review of designation.—Following the initial designation of the mechanical licensing collective, the Register shall, every 5 years, beginning with the fifth full calendar year to commence after the initial designation, publish notice in the Federal Register in the month of January soliciting information concerning whether the existing designation should be continued, or a different entity meeting the criteria described in clauses (i) through (iii) of subparagraph (A) shall be designated. Following publication of such notice, the Register shall—

(I) after reviewing the information submitted and conducting additional proceedings as appropriate, publish notice in the Federal Register of a continuing designation or new designation of the mechanical licensing collective, as the case may be, and the reasons for such a designation, with any new designation to be effective as of the first day of a month that is not less than 6 months and not longer than 9 months after the date on which the Register publishes the notice, as specified by the Register; and

(II) if a new entity is designated as the mechanical licensing collective, adopt regulations to govern the transfer of licenses, funds, records, data, and administrative responsibilities from the existing mechanical licensing collective to the new entity.

(iii) Closest alternative designation.—If the Register is unable to identify an entity that fulfills each of the qualifications set forth in clauses (i) through (iii) of subparagraph (A), the Register shall designate the entity that most nearly fulfills such qualifications for purposes of carrying out the responsibilities of the mechanical licensing collective.

(C) Authorities and functions.—

(i) In general.—The mechanical licensing collective is authorized to perform the following functions, subject to more particular requirements as described in this subsection:

(I) Offer and administer blanket licenses, including receipt of notices of license and reports of usage from digital music providers.

(II) Collect and distribute royalties from digital music providers for covered activities.

(III) Engage in efforts to identify musical works (and shares of such works) embodied in particular sound recordings, and to identify and locate the copyright owners of such musical works (and shares of such works).

(IV) Maintain the musical works database and other information relevant to the administration of licensing activities under this section.

(V) Administer a process by which copyright owners can claim ownership of musical works (and shares of such works), and a process by which royalties for works for which the owner is not identified or located are equitably distributed to known copyright owners.

(VI) Administer collections of the administrative assessment from digital music providers and significant nonblanket licensees, including receipt of notices of nonblanket activity.

(VII) Invest in relevant resources, and arrange for services of outside vendors and others, to support the activities of the mechanical licensing collective.

(VIII) Engage in legal and other efforts to enforce rights and obligations under this subsection, including by filing bankruptcy proofs of claims for amounts owed under licenses, and acting in coordination with the digital licensee coordinator.

(IX) Initiate and participate in proceedings before the Copyright Royalty Judges to establish the administrative assessment under this subsection.

(X) Initiate and participate in proceedings before the Copyright Office with respect to activities under this subsection.

(XI) Gather and provide documentation for use in proceedings before the Copyright Royalty Judges to set rates and terms under this section.

(XII) Maintain records of the activities of the mechanical licensing collective and engage in and respond to audits described in this subsection.

(XIII) Engage in such other activities as may be necessary or appropriate to fulfill the responsibilities of the mechanical licensing collective under this subsection.

(ii) Restrictions concerning licensing and administrative activities.—With respect to the administration of licenses, except as provided in clauses (i) and (iii) and subparagraph (E)(v), the mechanical licensing collective may only—

(I) issue blanket licenses pursuant to subsection (d)(1); and

(II) administer blanket licenses for reproduction or distribution rights in musical works for covered activities, including collecting and distributing royalties, pursuant to blanket licenses.

(iii) Additional administrative activities.—Subject to paragraph (11)(C), the mechanical licensing collective may also administer, including by collecting and distributing royalties, voluntary licenses issued by, or individual download licenses obtained from, copyright owners only for reproduction or distribution rights in musical works for covered activities, for which the mechanical licensing collective shall charge reasonable fees for such services.

(iv) Restriction on lobbying.—The mechanical licensing collective may not engage in government lobbying activities, but may engage in the activities described in subclauses (IX), (X), and (XI) of clause (i).

(D) Governance.—

(i) Board of directors.—The mechanical licensing collective shall have a board of directors consisting of 14 voting members and 3 nonvoting members, as follows:

(I) Ten voting members shall be representatives of music publishers—

(aa) to which songwriters have assigned exclusive rights of reproduction and distribution of musical works with respect to covered activities; and

(bb) none of which may be owned by, or under common control with, any other board member.

(II) Four voting members shall be professional songwriters who have retained and exercise exclusive rights of reproduction and

distribution with respect to covered activities with respect to musical works they have authored.

(III) One nonvoting member shall be a representative of the nonprofit trade association of music publishers that represents the greatest percentage of the licensor market for uses of musical works in covered activities, as measured for the 3-year period preceding the date on which the member is appointed.

(IV) One nonvoting member shall be a representative of the digital licensee coordinator, provided that a digital licensee coordinator has been designated pursuant to paragraph (5)(B). Otherwise, the nonvoting member shall be the nonprofit trade association of digital licensees that represents the greatest percentage of the licensee market for uses of musical works in covered activities, as measured over the preceding 3 full calendar years.

(V) One nonvoting member shall be a representative of a nationally recognized nonprofit trade association whose primary mission is advocacy on behalf of songwriters in the United States.

(ii) Bylaws.—

(I) Establishment.—Not later than 1 year after the date on which the mechanical licensing collective is initially designated by the Register of Copyrights under subparagraph (B)(i), the collective shall establish bylaws to determine issues relating to the governance of the collective, including, but not limited to—

(aa) the length of the term for each member of the board of directors;

(bb) the staggering of the terms of the members of the board of directors;

(cc) a process for filling a seat on the board of directors that is vacated before the end of the term with respect to that seat;

(dd) a process for electing a member to the board of directors; and

(ee) a management structure for daily operation of the collective.

(II) Public availability.—The mechanical licensing collective shall make the bylaws established under subclause (I) available to the public.

(iii) Board meetings.—The board of directors shall meet not less frequently than biannually and discuss matters pertinent to the operations of the mechanical licensing collective, including the mechanical licensing collective budget.

(iv) Operations advisory committee.—The board of directors of the mechanical licensing collective shall establish an operations

advisory committee consisting of not fewer than 6 members to make recommendations to the board of directors concerning the operations of the mechanical licensing collective, including the efficient investment in and deployment of information technology and data resources. Such committee shall have an equal number of members of the committee who are—

(I) musical work copyright owners who are appointed by the board of directors of the mechanical licensing collective; and

(II) representatives of digital music providers who are appointed by the digital licensee coordinator.

(v) Unclaimed royalties oversight committee.—The board of directors of the mechanical licensing collective shall establish and appoint an unclaimed royalties oversight committee consisting of 10 members, 5 of which shall be musical work copyright owners and 5 of which shall be professional songwriters whose works are used in covered activities.

(vi) Dispute resolution committee.—The board of directors of the mechanical licensing collective shall establish and appoint a dispute resolution committee that shall—

(I) consist of not fewer than 6 members; and

(II) include an equal number of representatives of musical work copyright owners and professional songwriters.

(vii) Mechanical licensing collective annual report.—

(I) In general.—Not later than June 30 of each year commencing after the license availability date, the mechanical licensing collective shall post, and make available online for a period of not less than 3 years, an annual report that sets forth information regarding—

(aa) the operational and licensing practices of the collective;

(bb) how royalties are collected and distributed;

(cc) budgeting and expenditures;

(dd) the collective total costs for the preceding calendar year;

(ee) the projected annual mechanical licensing collective budget;

(ff) aggregated royalty receipts and payments;

(gg) expenses that are more than 10 percent of the annual mechanical licensing collective budget; and

(hh) the efforts of the collective to locate and identify copyright owners of unmatched musical works (and shares of works).

(II) Submission.—On the date on which the mechanical licensing collective posts each report required under subclause (I), the collective shall provide a copy of the report to the Register of Copyrights.

(viii) Independent officers.—An individual serving as an officer of the mechanical licensing collective may not, at the same time, also be an employee or agent of any member of the board of directors of the collective or any entity represented by a member of the board of directors, as described in clause (i).

(ix) Oversight and accountability.—

(I) In general.—The mechanical licensing collective shall—

(aa) ensure that the policies and practices of the collective are transparent and accountable;

(bb) identify a point of contact for publisher inquiries and complaints with timely redress; and

(cc) establish an anti-comingling policy for funds not collected under this section and royalties collected under this section.

(II) Audits.—

(aa) In general.—Beginning in the fourth full calendar year that begins after the initial designation of the mechanical licensing collective by the Register of Copyrights under subparagraph (B)(i), and in every fifth calendar year thereafter, the collective shall retain a qualified auditor that shall—

(AA) examine the books, records, and operations of the collective;

(BB) prepare a report for the board of directors of the collective with respect to the matters described in item (bb); and

(CC) not later than December 31 of the year in which the qualified auditor is retained, deliver the report described in subitem (BB) to the board of directors of the collective.

(bb) Matters addressed.—Each report prepared under item (aa) shall address the implementation and efficacy of procedures of the mechanical licensing collective—

(AA) for the receipt, handling, and distribution of royalty funds, including any amounts held as unclaimed royalties;

(BB) to guard against fraud, abuse, waste, and the unreasonable use of funds; and

(CC) to protect the confidentiality of financial, proprietary, and other sensitive information.

(cc) Public availability.—With respect to each report prepared under item (aa), the mechanical licensing collective shall—

(AA) submit the report to the Register of Copyrights; and

(BB) make the report available to the public.

(E) Musical works database.—

(i) Establishment and maintenance of database.—The mechanical licensing collective shall establish and maintain a database

containing information relating to musical works (and shares of such works) and, to the extent known, the identity and location of the copyright owners of such works (and shares thereof) and the sound recordings in which the musical works are embodied. In furtherance of maintaining such database, the mechanical licensing collective shall engage in efforts to identify the musical works embodied in particular sound recordings, as well as to identify and locate the copyright owners of such works (and shares thereof), and update such data as appropriate.

(ii) Matched works.—With respect to musical works (and shares thereof) that have been matched to copyright owners, the musical works database shall include—

(I) the title of the musical work;

(II) the copyright owner of the work (or share thereof), and the ownership percentage of that owner;

(III) contact information for such copyright owner;

(IV) to the extent reasonably available to the mechanical licensing collective—

(aa) the international standard musical work code for the work; and

(bb) identifying information for sound recordings in which the musical work is embodied, including the name of the sound recording, featured artist, sound recording copyright owner, producer, international standard recording code, and other information commonly used to assist in associating sound recordings with musical works; and

(V) such other information as the Register of Copyrights may prescribe by regulation.

(iii) Unmatched works.—With respect to unmatched musical works (and shares of works) in the database, the musical works database shall include—

(I) to the extent reasonably available to the mechanical licensing collective—

(aa) the title of the musical work;

(bb) the ownership percentage for which an owner has not been identified;

(cc) if a copyright owner has been identified but not located, the identity of such owner and the ownership percentage of that owner;

(dd) identifying information for sound recordings in which the work is embodied, including sound recording name, featured artist, sound recording copyright owner, producer, international

standard recording code, and other information commonly used to assist in associating sound recordings with musical works; and

(ee) any additional information reported to the mechanical licensing collective that may assist in identifying the work; and

(II) such other information relating to the identity and ownership of musical works (and shares of such works) as the Register of Copyrights may prescribe by regulation.

(iv) Sound recording information.—Each musical work copyright owner with any musical work listed in the musical works database shall engage in commercially reasonable efforts to deliver to the mechanical licensing collective, including for use in the musical works database, to the extent such information is not then available in the database, information regarding the names of the sound recordings in which that copyright owner's musical works (or shares thereof) are embodied, to the extent practicable.

(v) Accessibility of database.—The musical works database shall be made available to members of the public in a searchable, online format, free of charge. The mechanical licensing collective shall make such database available in a bulk, machine-readable format, through a widely available software application, to the following entities:

(I) Digital music providers operating under the authority of valid notices of license, free of charge.

(II) Significant nonblanket licensees in compliance with their obligations under paragraph (6), free of charge.

(III) Authorized vendors of the entities described in subclauses (I) and (II), free of charge.

(IV) The Register of Copyrights, free of charge (but the Register shall not treat such database or any information therein as a Government record).

(V) Any other person or entity for a fee not to exceed the marginal cost to the mechanical licensing collective of providing the database to such person or entity.

(vi) Additional requirements.—The Register of Copyrights shall establish requirements by regulations to ensure the usability, interoperability, and usage restrictions of the musical works database.

(F) Notices of license and nonblanket activity.—

(i) Notices of licenses.—The mechanical licensing collective shall receive, review, and confirm or reject notices of license from digital music providers, as provided in paragraph (2)(A). The collective shall maintain a current, publicly accessible list of blanket licenses that includes contact information for the licensees and the effective dates of such licenses.

(ii) Notices of nonblanket activity.—The mechanical licensing collective shall receive notices of nonblanket activity from significant nonblanket licensees, as provided in paragraph (6)(A). The collective shall maintain a current, publicly accessible list of notices of nonblanket activity that includes contact information for significant nonblanket licensees and the dates of receipt of such notices.

(G) Collection and distribution of royalties.—

(i) In general.—Upon receiving reports of usage and payments of royalties from digital music providers for covered activities, the mechanical licensing collective shall—

(I) engage in efforts to—

(aa) identify the musical works embodied in sound recordings reflected in such reports, and the copyright owners of such musical works (and shares thereof);

(bb) confirm uses of musical works subject to voluntary licenses and individual download licenses, and the corresponding pro rata amounts to be deducted from royalties that would otherwise be due under the blanket license; and

(cc) confirm proper payment of royalties due;

(II) distribute royalties to copyright owners in accordance with the usage and other information contained in such reports, as well as the ownership and other information contained in the records of the collective; and

(III) deposit into an interest-bearing account, as provided in subparagraph (H)(ii), royalties that cannot be distributed due to—

(aa) an inability to identify or locate a copyright owner of a musical work (or share thereof); or

(bb) a pending dispute before the dispute resolution committee of the mechanical licensing collective.

(ii) Other collection efforts.—Any royalties recovered by the mechanical licensing collective as a result of efforts to enforce rights or obligations under a blanket license, including through a bankruptcy proceeding or other legal action, shall be distributed to copyright owners based on available usage information and in accordance with the procedures described in subclauses (I) and (II) of clause (i), on a pro rata basis in proportion to the overall percentage recovery of the total royalties owed, with any pro rata share of royalties that cannot be distributed deposited in an interest-bearing account as provided in subparagraph (H)(ii).

(H) Holding of accrued royalties.—

(i) Holding period.—The mechanical licensing collective shall hold accrued royalties associated with particular musical works (and

shares of works) that remain unmatched for a period of not less than 3 years after the date on which the funds were received by the mechanical licensing collective, or not less than 3 years after the date on which the funds were accrued by a digital music provider that subsequently transferred such funds to the mechanical licensing collective pursuant to paragraph (10)(B), whichever period expires sooner.

(ii) Interest-bearing account.—Accrued royalties for unmatched works (and shares thereof) shall be maintained by the mechanical licensing collective in an interest-bearing account that earns monthly interest—

(I) at the Federal, short-term rate; and

(II) that accrues for the benefit of copyright owners entitled to payment of such accrued royalties.

(I) Musical works claiming process.—When a copyright owner of an unmatched work (or share of a work) has been identified and located in accordance with the procedures of the mechanical licensing collective, the collective shall—

(i) update the musical works database and the other records of the collective accordingly; and

(ii) provided that accrued royalties for the musical work (or share thereof) have not yet been included in a distribution pursuant to subparagraph (J)(i), pay such accrued royalties and a proportionate amount of accrued interest associated with that work (or share thereof) to the copyright owner, accompanied by a cumulative statement of account reflecting usage of such work and accrued royalties based on information provided by digital music providers to the mechanical licensing collective.

(J) Distribution of unclaimed accrued royalties.—

(i) Distribution procedures.—After the expiration of the prescribed holding period for accrued royalties provided in subparagraph (H)(i), the mechanical licensing collective shall distribute such accrued royalties, along with a proportionate share of accrued interest, to copyright owners identified in the records of the collective, subject to the following requirements, and in accordance with the policies and procedures established under clause (ii):

(I) The first such distribution shall occur on or after January 1 of the second full calendar year to commence after the license availability date, with not less than 1 such distribution to take place during each calendar year thereafter.

(II) Copyright owners' payment shares for unclaimed accrued royalties for particular reporting periods shall be determined in a transparent and equitable manner based on data indicating the relative

market shares of such copyright owners as reflected in reports of usage provided by digital music providers for covered activities for the periods in question, including, in addition to usage data provided to the mechanical licensing collective, usage data provided to copyright owners under voluntary licenses and individual download licenses for covered activities, to the extent such information is available to the mechanical licensing collective. In furtherance of the determination of equitable market shares under this subparagraph—

(aa) the mechanical licensing collective may require copyright owners seeking distributions of unclaimed accrued royalties to provide, or direct the provision of, information concerning the usage of musical works under voluntary licenses and individual download licenses for covered activities; and

(bb) the mechanical licensing collective shall take appropriate steps to safeguard the confidentiality and security of usage, financial, and other sensitive data used to compute market shares in accordance with the confidentiality provisions prescribed by the Register of Copyrights under paragraph (12)(C).

(ii) Establishment of distribution policies.—The unclaimed royalties oversight committee established under subparagraph (D)(v) shall establish policies and procedures for the distribution of unclaimed accrued royalties and accrued interest in accordance with this subparagraph, including the provision of usage data to copyright owners to allocate payments and credits to songwriters pursuant to clause (iv), subject to the approval of the board of directors of the mechanical licensing collective.

(iii) Public notice of unclaimed accrued royalties.—The mechanical licensing collective shall—

(I) maintain a publicly accessible online facility with contact information for the collective that lists unmatched musical works (and shares of works), through which a copyright owner may assert an ownership claim with respect to such a work (and a share of such a work);

(II) engage in diligent, good-faith efforts to publicize, throughout the music industry—

(aa) the existence of the collective and the ability to claim unclaimed accrued royalties for unmatched musical works (and shares of such works) held by the collective;

(bb) the procedures by which copyright owners may identify themselves and provide contact, ownership, and other relevant information to the collective in order to receive payments of accrued royalties;

(cc) any transfer of accrued royalties for musical works under paragraph (10)(B), not later than 180 days after the date on which the transfer is received; and

(dd) any pending distribution of unclaimed accrued royalties and accrued interest, not less than 90 days before the date on which the distribution is made; and

(III) as appropriate, participate in music industry conferences and events for the purpose of publicizing the matters described in subclause (II).

(iv) Songwriter payments.—Copyright owners that receive a distribution of unclaimed accrued royalties and accrued interest shall pay or credit a portion to songwriters (or the authorized agents of songwriters) on whose behalf the copyright owners license or administer musical works for covered activities, in accordance with applicable contractual terms, but notwithstanding any agreement to the contrary—

(I) such payments and credits to songwriters shall be allocated in proportion to reported usage of individual musical works by digital music providers during the reporting periods covered by the distribution from the mechanical licensing collective; and

(II) in no case shall the payment or credit to an individual songwriter be less than 50 percent of the payment received by the copyright owner attributable to usage of musical works (or shares of works) of that songwriter.

(K) Dispute resolution.—The dispute resolution committee established under subparagraph (D)(vi) shall establish policies and procedures—

(i) for copyright owners to address in a timely and equitable manner disputes relating to ownership interests in musical works licensed under this section and allocation and distribution of royalties by the mechanical licensing collective, subject to the approval of the board of directors of the mechanical licensing collective;

(ii) that shall include a mechanism to hold disputed funds in accordance with the requirements described in subparagraph (H)(ii) pending resolution of the dispute; and

(iii) except as provided in paragraph (11)(D), that shall not affect any legal or equitable rights or remedies available to any copyright owner or songwriter concerning ownership of, and entitlement to royalties for, a musical work.

(L) Verification of payments by mechanical licensing collective.—

(i) Verification process.—A copyright owner entitled to receive payments of royalties for covered activities from the mechanical licensing collective may, individually or with other copyright owners, conduct

an audit of the mechanical licensing collective to verify the accuracy of royalty payments by the mechanical licensing collective to such copyright owner, as follows:

(I) A copyright owner may audit the mechanical licensing collective only once in a year for any or all of the 3 calendar years preceding the year in which the audit is commenced, and may not audit records for any calendar year more than once.

(II) The audit shall be conducted by a qualified auditor, who shall perform the audit during the ordinary course of business by examining the books, records, and data of the mechanical licensing collective, according to generally accepted auditing standards and subject to applicable confidentiality requirements prescribed by the Register of Copyrights under paragraph (12)(C).

(III) The mechanical licensing collective shall make such books, records, and data available to the qualified auditor and respond to reasonable requests for relevant information, and shall use commercially reasonable efforts to facilitate access to relevant information maintained by third parties.

(IV) To commence the audit, any copyright owner shall file with the Copyright Office a notice of intent to conduct an audit of the mechanical licensing collective, identifying the period of time to be audited, and shall simultaneously deliver a copy of such notice to the mechanical licensing collective. The Register of Copyrights shall cause the notice of audit to be published in the Federal Register not later than 45 calendar days after the date on which the notice is received.

(V) The qualified auditor shall determine the accuracy of royalty payments, including whether an underpayment or overpayment of royalties was made by the mechanical licensing collective to each auditing copyright owner, except that, before providing a final audit report to any such copyright owner, the qualified auditor shall provide a tentative draft of the report to the mechanical licensing collective and allow the mechanical licensing collective a reasonable opportunity to respond to the findings, including by clarifying issues and correcting factual errors.

(VI) The auditing copyright owner or owners shall bear the cost of the audit. In case of an underpayment to any copyright owner, the mechanical licensing collective shall pay the amounts of any such underpayment to such auditing copyright owner, as appropriate. In case of an overpayment by the mechanical licensing collective, the mechanical licensing collective may debit the account of the auditing copyright owner or owners for such overpaid amounts, or such

owner or owners shall refund overpaid amounts to the mechanical licensing collective, as appropriate.

(ii) Alternative verification procedures.—Nothing in this subparagraph shall preclude a copyright owner and the mechanical licensing collective from agreeing to audit procedures different from those described in this subparagraph, except that a notice of the audit shall be provided to and published by the Copyright Office as described in clause (i)(IV).

(M) Records of mechanical licensing collective.—

(i) Records maintenance.—The mechanical licensing collective shall ensure that all material records of the operations of the mechanical licensing collective, including those relating to notices of license, the administration of the claims process of the mechanical licensing collective, reports of usage, royalty payments, receipt and maintenance of accrued royalties, royalty distribution processes, and legal matters, are preserved and maintained in a secure and reliable manner, with appropriate commercially reasonable safeguards against unauthorized access, copying, and disclosure, and subject to the confidentiality requirements prescribed by the Register of Copyrights under paragraph (12)(C) for a period of not less than 7 years after the date of creation or receipt, whichever occurs later.

(ii) Records access.—The mechanical licensing collective shall provide prompt access to electronic and other records pertaining to the administration of a copyright owner's musical works upon reasonable written request of the owner or the authorized representative of the owner.

(4) Terms and conditions of blanket license.—A blanket license is subject to, and conditioned upon, the following requirements:

(A) Royalty reporting and payments.—

(i) Monthly reports and payment.—A digital music provider shall report and pay royalties to the mechanical licensing collective under the blanket license on a monthly basis in accordance with clause (ii) and subsection (c)(2)(I), except that the monthly reporting shall be due on the date that is 45 calendar days, rather than 20 calendar days, after the end of the monthly reporting period.

(ii) Data to be reported.—In reporting usage of musical works to the mechanical licensing collective, a digital music provider shall provide usage data for musical works used under the blanket license and usage data for musical works used in covered activities under voluntary licenses and individual download licenses. In the report of usage, the digital music provider shall—

(I) with respect to each sound recording embodying a musical work—

(aa) provide identifying information for the sound recording, including sound recording name, featured artist, and, to the extent acquired by the digital music provider in connection with its use of sound recordings of musical works to engage in covered activities, including pursuant to subparagraph (B), sound recording copyright owner, producer, international standard recording code, and other information commonly used in the industry to identify sound recordings and match them to the musical works the sound recordings embody;

(bb) to the extent acquired by the digital music provider in the metadata provided by sound recording copyright owners or other licensors of sound recordings in connection with the use of sound recordings of musical works to engage in covered activities, including pursuant to subparagraph (B), provide information concerning authorship and ownership of the applicable rights in the musical work embodied in the sound recording (including each songwriter, publisher name, and respective ownership share) and the international standard musical work code; and

(cc) provide the number of digital phonorecord deliveries of the sound recording, including limited downloads and interactive streams;

(II) identify and provide contact information for all musical work copyright owners for works embodied in sound recordings as to which a voluntary license, rather than the blanket license, is in effect with respect to the uses being reported; and

(III) provide such other information as the Register of Copyrights shall require by regulation.

(iii) Format and maintenance of reports.—Reports of usage provided by digital music providers to the mechanical licensing collective shall be in a machine-readable format that is compatible with the information technology systems of the mechanical licensing collective and meets the requirements of regulations adopted by the Register of Copyrights. The Register shall also adopt regulations setting forth requirements under which records of use shall be maintained and made available to the mechanical licensing collective by digital music providers engaged in covered activities under a blanket license.

(iv) Adoption of regulations.—The Register of Copyrights shall adopt regulations—

(I) setting forth requirements under which records of use shall be maintained and made available to the mechanical licensing collective

by digital music providers engaged in covered activities under a blanket license; and

(II) regarding adjustments to reports of usage by digital music providers, including mechanisms to account for overpayment and underpayment of royalties in prior periods.

(B) Collection of sound recording information.—A digital music provider shall engage in good-faith, commercially reasonable efforts to obtain from sound recording copyright owners and other licensors of sound recordings made available through the service of such digital music provider information concerning—

(i) sound recording copyright owners, producers, international standard recording codes, and other information commonly used in the industry to identify sound recordings and match them to the musical works the sound recordings embody; and

(ii) the authorship and ownership of musical works, including songwriters, publisher names, ownership shares, and international standard musical work codes.

(C) Payment of administrative assessment.—A digital music provider and any significant nonblanket licensee shall pay the administrative assessment established under paragraph (7)(D) in accordance with this subsection and applicable regulations.

(D) Verification of payments by digital music providers.—

(i) Verification process.—The mechanical licensing collective may conduct an audit of a digital music provider operating under the blanket license to verify the accuracy of royalty payments by the digital music provider to the mechanical licensing collective as follows:

(I) The mechanical licensing collective may commence an audit of a digital music provider not more frequently than once in any 3-calendar-year period to cover a verification period of not more than the 3 full calendar years preceding the date of commencement of the audit, and such audit may not audit records for any such 3-year verification period more than once.

(II) The audit shall be conducted by a qualified auditor, who shall perform the audit during the ordinary course of business by examining the books, records, and data of the digital music provider, according to generally accepted auditing standards and subject to applicable confidentiality requirements prescribed by the Register of Copyrights under paragraph (12)(C).

(III) The digital music provider shall make such books, records, and data available to the qualified auditor and respond to reasonable requests for relevant information, and shall use commercially

reasonable efforts to provide access to relevant information maintained with respect to a digital music provider by third parties.

(IV) To commence the audit, the mechanical licensing collective shall file with the Copyright Office a notice of intent to conduct an audit of the digital music provider, identifying the period of time to be audited, and shall simultaneously deliver a copy of such notice to the digital music provider. The Register of Copyrights shall cause the notice of audit to be published in the Federal Register not later than 45 calendar days after the date on which notice is received.

(V) The qualified auditor shall determine the accuracy of royalty payments, including whether an underpayment or overpayment of royalties was made by the digital music provider to the mechanical licensing collective, except that, before providing a final audit report to the mechanical licensing collective, the qualified auditor shall provide a tentative draft of the report to the digital music provider and allow the digital music provider a reasonable opportunity to respond to the findings, including by clarifying issues and correcting factual errors.

(VI) The mechanical licensing collective shall pay the cost of the audit, unless the qualified auditor determines that there was an underpayment by the digital music provider of not less than 10 percent, in which case the digital music provider shall bear the reasonable costs of the audit, in addition to paying the amount of any underpayment to the mechanical licensing collective. In case of an overpayment by the digital music provider, the mechanical licensing collective shall provide a credit to the account of the digital music provider.

(VII) A digital music provider may not assert section 507 or any other Federal or State statute of limitations, doctrine of laches or estoppel, or similar provision as a defense to a legal action arising from an audit under this subparagraph if such legal action is commenced not more than 6 years after the commencement of the audit that is the basis for such action.

(ii) Alternative verification procedures.—Nothing in this subparagraph shall preclude the mechanical licensing collective and a digital music provider from agreeing to audit procedures different from those described in this subparagraph, except that a notice of the audit shall be provided to and published by the Copyright Office as described in clause (i)(IV).

(E) Default under blanket license.—

(i) Conditions of default.—A digital music provider shall be in default under a blanket license if the digital music provider—

(I) fails to provide 1 or more monthly reports of usage to the mechanical licensing collective when due;

(II) fails to make a monthly royalty or late fee payment to the mechanical licensing collective when due, in all or material part;

(III) provides 1 or more monthly reports of usage to the mechanical licensing collective that, on the whole, is or are materially deficient as a result of inaccurate, missing, or unreadable data, where the correct data was available to the digital music provider and required to be reported under this section and applicable regulations;

(IV) fails to pay the administrative assessment as required under this subsection and applicable regulations; or

(V) after being provided written notice by the mechanical licensing collective, refuses to comply with any other material term or condition of the blanket license under this section for a period of not less than 60 calendar days.

(ii) Notice of default and termination.—In case of a default by a digital music provider, the mechanical licensing collective may proceed to terminate the blanket license of the digital music provider as follows:

(I) The mechanical licensing collective shall provide written notice to the digital music provider describing with reasonable particularity the default and advising that unless such default is cured not later than 60 calendar days after the date of the notice, the blanket license will automatically terminate at the end of that period.

(II) If the digital music provider fails to remedy the default before the end of the 60-day period described in subclause (I), the license shall terminate without any further action on the part of the mechanical licensing collective. Such termination renders the making of all digital phonorecord deliveries of all musical works (and shares thereof) covered by the blanket license for which the royalty or administrative assessment has not been paid actionable as acts of infringement under section 501 and subject to the remedies provided by sections 502 through 506.

(iii) Notice to copyright owners.—The mechanical licensing collective shall provide written notice of any termination under this subparagraph to copyright owners of affected works.

(iv) Review by federal district court.—A digital music provider that believes a blanket license was improperly terminated by the mechanical licensing collective may seek review of such termination in an appropriate district court of the United States. The district court shall determine the matter de novo based on the record before the mechanical licensing collective and any additional supporting evidence presented by the parties.

(5) Digital licensee coordinator.—

(A) In general.—The digital licensee coordinator shall be a single entity that—

(i) is a nonprofit, not owned by any other entity, that is created to carry out responsibilities under this subsection;

(ii) is endorsed by and enjoys substantial support from digital music providers and significant nonblanket licensees that together represent the greatest percentage of the licensee market for uses of musical works in covered activities, as measured over the preceding 3 calendar years;

(iii) is able to demonstrate that it has, or will have prior to the license availability date, the administrative capabilities to perform the required functions of the digital licensee coordinator under this subsection; and

(iv) has been designated by the Register of Copyrights, with the approval of the Librarian of Congress pursuant to section 702, in accordance with subparagraph (B).

(B) Designation of digital licensee coordinator.—

(i) Initial designation.—The Register of Copyrights shall initially designate the digital licensee coordinator not later than 270 days after the enactment date, in accordance with the same procedure described for designation of the mechanical licensing collective in paragraph (3)(B)(i).

(ii) Periodic review of designation.—Following the initial designation of the digital licensee coordinator, the Register of Copyrights shall, every 5 years, beginning with the fifth full calendar year to commence after the initial designation, determine whether the existing designation should be continued, or a different entity meeting the criteria described in clauses (i) through (iii) of subparagraph (A) should be designated, in accordance with the same procedure described for the mechanical licensing collective in paragraph (3)(B)(ii).

(iii) Inability to designate.—If the Register of Copyrights is unable to identify an entity that fulfills each of the qualifications described in clauses (i) through (iii) of subparagraph (A) to serve as the digital licensee coordinator, the Register may decline to designate a digital licensee coordinator. The determination of the Register not to designate a digital licensee coordinator shall not negate or otherwise affect any provision of this subsection except to the limited extent that a provision references the digital licensee coordinator. In such case, the reference to the digital licensee coordinator shall be without effect unless and until a new digital licensee coordinator is designated.

(C) Authorities and functions.—

(i) In general.—The digital licensee coordinator is authorized to perform the following functions, subject to more particular requirements as described in this subsection:

(I) Establish a governance structure, criteria for membership, and any dues to be paid by its members.

(II) Engage in efforts to enforce notice and payment obligations with respect to the administrative assessment, including by receiving information from and coordinating with the mechanical licensing collective.

(III) Initiate and participate in proceedings before the Copyright Royalty Judges to establish the administrative assessment under this subsection.

(IV) Initiate and participate in proceedings before the Copyright Office with respect to activities under this subsection.

(V) Gather and provide documentation for use in proceedings before the Copyright Royalty Judges to set rates and terms under this section.

(VI) Maintain records of its activities.

(VII) Assist in publicizing the existence of the mechanical licensing collective and the ability of copyright owners to claim royalties for unmatched musical works (and shares of works) through the collective.

(VIII) Engage in such other activities as may be necessary or appropriate to fulfill its responsibilities under this subsection.

(ii) Restriction on lobbying.—The digital licensee coordinator may not engage in government lobbying activities, but may engage in the activities described in subclauses (III), (IV), and (V) of clause (i).

(iii) Assistance with publicity for unclaimed royalties.—The digital licensee coordinator shall make reasonable, good-faith efforts to assist the mechanical licensing collective in the efforts of the collective to locate and identify copyright owners of unmatched musical works (and shares of such works) by encouraging digital music providers to publicize the existence of the collective and the ability of copyright owners to claim unclaimed accrued royalties, including by—

(I) posting contact information for the collective at reasonably prominent locations on digital music provider websites and applications; and

(II) conducting in-person outreach activities with songwriters.

(6) Requirements for significant nonblanket licensees.—

(A) In general.—

(i) Notice of activity.—Not later than 45 calendar days after the license availability date, or 45 calendar days after the end of the first full calendar month in which an entity initially qualifies as a significant nonblanket licensee, whichever occurs later, a significant nonblanket licensee shall submit a notice of nonblanket activity to the mechanical

licensing collective. The notice of nonblanket activity shall comply in form and substance with requirements that the Register of Copyrights shall establish by regulation, and a copy shall be made available to the digital licensee coordinator.

(ii) Reporting and payment obligations.—The notice of nonblanket activity submitted to the mechanical licensing collective shall be accompanied by a report of usage that contains the information described in paragraph (4)(A)(ii), as well as any payment of the administrative assessment required under this subsection and applicable regulations. Thereafter, subject to clause (iii), a significant nonblanket licensee shall continue to provide monthly reports of usage, accompanied by any required payment of the administrative assessment, to the mechanical licensing collective. Such reports and payments shall be submitted not later than 45 calendar days after the end of the calendar month being reported.

(iii) Discontinuation of obligations.—An entity that has submitted a notice of nonblanket activity to the mechanical licensing collective that has ceased to qualify as a significant nonblanket licensee may so notify the collective in writing. In such case, as of the calendar month in which such notice is provided, such entity shall no longer be required to provide reports of usage or pay the administrative assessment, but if such entity later qualifies as a significant nonblanket licensee, such entity shall again be required to comply with clauses (i) and (ii).

(B) Reporting by mechanical licensing collective to digital licensee coordinator.—

(i) Monthly reports of noncompliant licensees.—The mechanical licensing collective shall provide monthly reports to the digital licensee coordinator setting forth any significant nonblanket licensees of which the collective is aware that have failed to comply with subparagraph (A).

(ii) Treatment of confidential information.—The mechanical licensing collective and digital licensee coordinator shall take appropriate steps to safeguard the confidentiality and security of financial and other sensitive data shared under this subparagraph, in accordance with the confidentiality requirements prescribed by the Register of Copyrights under paragraph (12)(C).

(C) Legal enforcement efforts.—

(i) Federal court action.—Should the mechanical licensing collective or digital licensee coordinator become aware that a significant nonblanket licensee has failed to comply with subparagraph (A), either may commence an action in an appropriate district court of the United States for damages and injunctive relief. If the significant nonblanket

licensee is found liable, the court shall, absent a finding of excusable neglect, award damages in an amount equal to three times the total amount of the unpaid administrative assessment and, notwithstanding anything to the contrary in section 505, reasonable attorney's fees and costs, as well as such other relief as the court determines appropriate. In all other cases, the court shall award relief as appropriate. Any recovery of damages shall be payable to the mechanical licensing collective as an offset to the collective total costs.

(ii) Statute of limitations for enforcement action.—Any action described in this subparagraph shall be commenced within the time period described in section 507(b).

(iii) Other rights and remedies preserved.—The ability of the mechanical licensing collective or digital licensee coordinator to bring an action under this subparagraph shall in no way alter, limit or negate any other right or remedy that may be available to any party at law or in equity.

(7) Funding of mechanical licensing collective.—

(A) In general.—The collective total costs shall be funded by—

(i) an administrative assessment, as such assessment is established by the Copyright Royalty Judges pursuant to subparagraph (D) from time to time, to be paid by—

(I) digital music providers that are engaged, in all or in part, in covered activities pursuant to a blanket license; and

(II) significant nonblanket licensees; and

(ii) voluntary contributions from digital music providers and significant nonblanket licensees as may be agreed with copyright owners.

(B) Voluntary contributions.—

(i) Agreements concerning contributions.—Except as provided in clause (ii), voluntary contributions by digital music providers and significant nonblanket licensees shall be determined by private negotiation and agreement, and the following conditions apply:

(I) The date and amount of each voluntary contribution to the mechanical licensing collective shall be documented in a writing signed by an authorized agent of the mechanical licensing collective and the contributing party.

(II) Such agreement shall be made available as required in proceedings before the Copyright Royalty Judges to establish or adjust the administrative assessment in accordance with applicable statutory and regulatory provisions and rulings of the Copyright Royalty Judges.

(ii) Treatment of contributions.—Each voluntary contribution described in clause (i) shall be treated for purposes of an administrative

assessment proceeding as an offset to the collective total costs that would otherwise be recovered through the administrative assessment. Any allocation or reallocation of voluntary contributions between or among individual digital music providers or significant nonblanket licensees shall be a matter of private negotiation and agreement among such parties and outside the scope of the administrative assessment proceeding.

(C) Interim application of accrued royalties.—In the event that the administrative assessment, together with any funding from voluntary contributions as provided in subparagraphs (A) and (B), is inadequate to cover current collective total costs, the collective, with approval of its board of directors, may apply unclaimed accrued royalties on an interim basis to defray such costs, subject to future reimbursement of such royalties from future collections of the assessment.

(D) Determination of administrative assessment.—

(i) Administrative assessment to cover collective total costs.—The administrative assessment shall be used solely and exclusively to fund the collective total costs.

(ii) Separate proceeding before copyright royalty judges.—The amount and terms of the administrative assessment shall be determined and established in a separate and independent proceeding before the Copyright Royalty Judges, according to the procedures described in clauses (iii) and (iv). The administrative assessment determined in such proceeding shall—

(I) be wholly independent of royalty rates and terms applicable to digital music providers, which shall not be taken into consideration in any manner in establishing the administrative assessment;

(II) be established by the Copyright Royalty Judges in an amount that is calculated to defray the reasonable collective total costs;

(III) be assessed based on usage of musical works by digital music providers and significant nonblanket licensees in covered activities under both compulsory and nonblanket licenses;

(IV) may be in the form of a percentage of royalties payable under this section for usage of musical works in covered activities (regardless of whether a different rate applies under a voluntary license), or any other usage-based metric reasonably calculated to equitably allocate the collective total costs across digital music providers and significant nonblanket licensees engaged in covered activities, and shall include as a component a minimum fee for all digital music providers and significant nonblanket licensees; and

(V) take into consideration anticipated future collective total costs and collections of the administrative assessment, including, as applicable—

(aa) any portion of past actual collective total costs of the mechanical licensing collective not funded by previous collections of the administrative assessment or voluntary contributions because such collections or contributions together were insufficient to fund such costs;

(bb) any past collections of the administrative assessment and voluntary contributions that exceeded past actual collective total costs, resulting in a surplus; and

(cc) the amount of any voluntary contributions by digital music providers or significant nonblanket licensees in relevant periods, described in subparagraphs (A) and (B) of paragraph (7).

(iii) Initial administrative assessment.—The procedure for establishing the initial administrative assessment shall be as follows:

(I) Not later than 270 days after the enactment date, the Copyright Royalty Judges shall commence a proceeding to establish the initial administrative assessment by publishing a notice in the Federal Register seeking petitions to participate.

(II) The mechanical licensing collective and digital licensee coordinator shall participate in the proceeding described in subclause (I), along with any interested copyright owners, digital music providers or significant nonblanket licensees that have notified the Copyright Royalty Judges of their desire to participate.

(III) The Copyright Royalty Judges shall establish a schedule for submission by the parties of information that may be relevant to establishing the administrative assessment, including actual and anticipated collective total costs of the mechanical licensing collective, actual and anticipated collections from digital music providers and significant nonblanket licensees, and documentation of voluntary contributions, as well as a schedule for further proceedings, which shall include a hearing, as the Copyright Royalty Judges determine appropriate.

(IV) The initial administrative assessment shall be determined, and such determination shall be published in the Federal Register by the Copyright Royalty Judges, not later than 1 year after commencement of the proceeding described in this clause. The determination shall be supported by a written record. The initial administrative assessment shall be effective as of the license availability date, and shall continue in effect unless and until an adjusted administrative assessment is established pursuant to an adjustment proceeding under clause (iv).

(iv) Adjustment of administrative assessment.—The administrative assessment may be adjusted by the Copyright Royalty Judges periodically, in accordance with the following procedures:

(I) Not earlier than 1 year after the most recent publication of a determination of the administrative assessment by the Copyright Royalty Judges, the mechanical licensing collective, the digital licensee coordinator, or one or more interested copyright owners, digital music providers, or significant nonblanket licensees, may file a petition with the Copyright Royalty Judges in the month of May to commence a proceeding to adjust the administrative assessment.

(II) Notice of the commencement of such proceeding shall be published in the Federal Register in the month of June following the filing of any petition, with a schedule of requested information and additional proceedings, as described in clause (iii)(III). The mechanical licensing collective and digital licensee coordinator shall participate in such proceeding, along with any interested copyright owners, digital music providers, or significant nonblanket licensees that have notified the Copyright Royalty Judges of their desire to participate.

(III) The determination of the adjusted administrative assessment, which shall be supported by a written record, shall be published in the Federal Register during June of the calendar year following the commencement of the proceeding. The adjusted administrative assessment shall take effect January 1 of the year following such publication.

(v) Adoption of voluntary agreements.—In lieu of reaching their own determination based on evaluation of relevant data, the Copyright Royalty Judges shall approve and adopt a negotiated agreement to establish the amount and terms of the administrative assessment that has been agreed to by the mechanical licensing collective and the digital licensee coordinator (or if none has been designated, interested digital music providers and significant nonblanket licensees representing more than half of the market for uses of musical works in covered activities), except that the Copyright Royalty Judges shall have the discretion to reject any such agreement for good cause shown. An administrative assessment adopted under this clause shall apply to all digital music providers and significant nonblanket licensees engaged in covered activities during the period the administrative assessment is in effect.

(vi) Continuing authority to amend.—The Copyright Royalty Judges shall retain continuing authority to amend a determination of an administrative assessment to correct technical or clerical errors, or modify the terms of implementation, for good cause, with any such amendment to be published in the Federal Register.

(vii) Appeal of administrative assessment.—The determination of an administrative assessment by the Copyright Royalty Judges shall be appealable, not later than 30 calendar days after publication in the Federal Register, to the Court of Appeals for the District of Columbia

Circuit by any party that fully participated in the proceeding. The administrative assessment as established by the Copyright Royalty Judges shall remain in effect pending the final outcome of any such appeal, and the mechanical licensing collective, digital licensee coordinator, digital music providers, and significant nonblanket licensees shall implement appropriate financial or other measures not later than 90 days after any modification of the assessment to reflect and account for such outcome.

(viii) Regulations.—The Copyright Royalty Judges may adopt regulations to govern the conduct of proceedings under this paragraph.

(8) Establishment of rates and terms under blanket license.—

(A) Restrictions on ratesetting participation.—Neither the mechanical licensing collective nor the digital licensee coordinator shall be a party to a proceeding described in subsection (c)(1)(E), except that the mechanical licensing collective or the digital licensee coordinator may gather and provide financial and other information for the use of a party to such a proceeding and comply with requests for information as required under applicable statutory and regulatory provisions and rulings of the Copyright Royalty Judges.

(B) Application of late fees.—In any proceeding described in subparagraph (A) in which the Copyright Royalty Judges establish a late fee for late payment of royalties for uses of musical works under this section, such fee shall apply to covered activities under blanket licenses, as follows:

(i) Late fees for past due royalty payments shall accrue from the due date for payment until payment is received by the mechanical licensing collective.

(ii) The availability of late fees shall in no way prevent a copyright owner or the mechanical licensing collective from asserting any other rights or remedies to which such copyright owner or the mechanical licensing collective may be entitled under this title.

(C) Interim rate agreements in general.—For any covered activity for which no rate or terms have been established by the Copyright Royalty Judges, the mechanical licensing collective and any digital music provider may agree to an interim rate and terms for such activity under the blanket license, and any such rate and terms—

(i) shall be treated as nonprecedential and not cited or relied upon in any ratesetting proceeding before the Copyright Royalty Judges or any other tribunal; and

(ii) shall automatically expire upon the establishment of a rate and terms for such covered activity by the Copyright Royalty Judges, under subsection (c)(1)(E).

(D) Adjustments for interim rates.—The rate and terms established by the Copyright Royalty Judges for a covered activity to which an

interim rate and terms have been agreed under subparagraph (C) shall supersede the interim rate and terms and apply retroactively to the inception of the activity under the blanket license. In such case, not later than 90 days after the effective date of the rate and terms established by the Copyright Royalty Judges—

(i) if the rate established by the Copyright Royalty Judges exceeds the interim rate, the digital music provider shall pay to the mechanical licensing collective the amount of any underpayment of royalties due; or

(ii) if the interim rate exceeds the rate established by the Copyright Royalty Judges, the mechanical licensing collective shall credit the account of the digital music provider for the amount of any overpayment of royalties due.

(9) Transition to blanket licenses.—

(A) Substitution of blanket license.—On the license availability date, a blanket license shall, without any interruption in license authority enjoyed by such digital music provider, be automatically substituted for and supersede any existing compulsory license previously obtained under this section by the digital music provider from a copyright owner to engage in 1 or more covered activities with respect to a musical work, except that such substitution shall not apply to any authority obtained from a record company pursuant to a compulsory license to make and distribute permanent downloads unless and until such record company terminates such authority in writing to take effect at the end of a monthly reporting period, with a copy to the mechanical licensing collective.

(B) Expiration of existing licenses.—Except to the extent provided in subparagraph (A), on and after the license availability date, licenses other than individual download licenses obtained under this section for covered activities prior to the license availability date shall no longer continue in effect.

(C) Treatment of voluntary licenses.—A voluntary license for a covered activity in effect on the license availability date will remain in effect unless and until the voluntary license expires according to the terms of the voluntary license, or the parties agree to amend or terminate the voluntary license. In a case where a voluntary license for a covered activity entered into before the license availability date incorporates the terms of this section by reference, the terms so incorporated (but not the rates) shall be those in effect immediately prior to the license availability date, and those terms shall continue to apply unless and until such voluntary license is terminated or amended, or the parties enter into a new voluntary license.

(D) Further acceptance of notices for covered activities by copyright office.—On and after the enactment date—

(i) the Copyright Office shall no longer accept notices of intention with respect to covered activities; and

(ii) notices of intention filed before the enactment date will no longer be effective or provide license authority with respect to covered activities, except that, before the license availability date, there shall be no liability under section 501 for the reproduction or distribution of a musical work (or share thereof) in covered activities if a valid notice of intention was filed for such work (or share) before the enactment date.

(10) Prior unlicensed uses.—

(A) Limitation on liability in general.—A copyright owner that commences an action under section 501 on or after January 1, 2018, against a digital music provider for the infringement of the exclusive rights provided by paragraph (1) or (3) of section 106 arising from the unauthorized reproduction or distribution of a musical work by such digital music provider in the course of engaging in covered activities prior to the license availability date, shall, as the copyright owner's sole and exclusive remedy against the digital music provider, be eligible to recover the royalty prescribed under subsection (c)(1)(C) and chapter 8, from the digital music provider, provided that such digital music provider can demonstrate compliance with the requirements of subparagraph (B), as applicable. In all other cases the limitation on liability under this subparagraph shall not apply.

(B) Requirements for limitation on liability.—The following requirements shall apply on the enactment date and through the end of the period that expires 90 days after the license availability date to digital music providers seeking to avail themselves of the limitation on liability described in subparagraph (A):

(i) Not later than 30 calendar days after first making a particular sound recording of a musical work available through its service via one or more covered activities, or 30 calendar days after the enactment date, whichever occurs later, a digital music provider shall engage in good-faith, commercially reasonable efforts to identify and locate each copyright owner of such musical work (or share thereof). Such required matching efforts shall include the following:

(I) Good-faith, commercially reasonable efforts to obtain from the owner of the corresponding sound recording made available through the digital music provider's service the following information:

(aa) Sound recording name, featured artist, sound recording copyright owner, producer, international standard recording code, and other information commonly used in the industry to identify sound recordings and match them to the musical works they embody.

(bb) Any available musical work ownership information, including each songwriter and publisher name, percentage ownership share, and international standard musical work code.

(II) Employment of 1 or more bulk electronic matching processes that are available to the digital music provider through a third-party vendor on commercially reasonable terms, except that a digital music provider may rely on its own bulk electronic matching process if that process has capabilities comparable to or better than those available from a third-party vendor on commercially reasonable terms.

(ii) The required matching efforts shall be repeated by the digital music provider not less than once per month for so long as the copyright owner remains unidentified or has not been located.

(iii) If the required matching efforts are successful in identifying and locating a copyright owner of a musical work (or share thereof) by the end of the calendar month in which the digital music provider first makes use of the work, the digital music provider shall provide statements of account and pay royalties to such copyright owner in accordance with this section and applicable regulations.

(iv) If the copyright owner is not identified or located by the end of the calendar month in which the digital music provider first makes use of the work, the digital music provider shall accrue and hold royalties calculated under the applicable statutory rate in accordance with usage of the work, from initial use of the work until the accrued royalties can be paid to the copyright owner or are required to be transferred to the mechanical licensing collective, as follows:

(I) Accrued royalties shall be maintained by the digital music provider in accordance with generally accepted accounting principles.

(II) If a copyright owner of an unmatched musical work (or share thereof) is identified and located by or to the digital music provider before the license availability date, the digital music provider shall—

(aa) not later than 45 calendar days after the end of the calendar month during which the copyright owner was identified and located, pay the copyright owner all accrued royalties, such payment to be accompanied by a cumulative statement of account that includes all of the information that would have been provided to the copyright owner had the digital music provider been providing monthly statements of account to the copyright owner from initial use of the work in accordance with this section and applicable regulations, including the requisite certification under subsection (c)(2)(I);

(bb) beginning with the accounting period following the calendar month in which the copyright owner was identified and

located, and for all other accounting periods prior to the license availability date, provide monthly statements of account and pay royalties to the copyright owner as required under this section and applicable regulations; and

(cc) beginning with the monthly royalty reporting period commencing on the license availability date, report usage and pay royalties for such musical work (or share thereof) for such reporting period and reporting periods thereafter to the mechanical licensing collective, as required under this subsection and applicable regulations.

(III) If a copyright owner of an unmatched musical work (or share thereof) is not identified and located by the license availability date, the digital music provider shall—

(aa) not later than 45 calendar days after the license availability date, transfer all accrued royalties to the mechanical licensing collective, such payment to be accompanied by a cumulative statement of account that includes all of the information that would have been provided to the copyright owner had the digital music provider been serving monthly statements of account on the copyright owner from initial use of the work in accordance with this section and applicable regulations, including the requisite certification under subsection (c)(2)(I), and accompanied by an additional certification by a duly authorized officer of the digital music provider that the digital music provider has fulfilled the requirements of clauses (i) and (ii) of subparagraph (B) but has not been successful in locating or identifying the copyright owner; and

(bb) beginning with the monthly royalty reporting period commencing on the license availability date, report usage and pay royalties for such musical work (or share thereof) for such period and reporting periods thereafter to the mechanical licensing collective, as required under this subsection and applicable regulations.

(v) A digital music provider that complies with the requirements of this subparagraph with respect to unmatched musical works (or shares of works) shall not be liable for or accrue late fees for late payments of royalties for such works until such time as the digital music provider is required to begin paying monthly royalties to the copyright owner or the mechanical licensing collective, as applicable.

(C) Adjusted statute of limitations.—Notwithstanding anything to the contrary in section 507(b), with respect to any claim of infringement of the exclusive rights provided by paragraphs (1) and (3) of section 106 against a digital music provider arising from the unauthorized reproduction or distribution of a musical work by such digital music provider in the

course of engaging in covered activities that accrued not more than 3 years prior to the license availability date, such action may be commenced not later than the later of—

(i) 3 years after the date on which the claim accrued; or

(ii) 2 years after the license availability date.

(D) Other rights and remedies preserved.—Except as expressly provided in this paragraph, nothing in this paragraph shall be construed to alter, limit, or negate any right or remedy of a copyright owner with respect to unauthorized use of a musical work.

(11) Legal protections for licensing activities.—

(A) Exemption for compulsory license activities.—The antitrust exemption described in subsection (c)(1)(D) shall apply to negotiations and agreements between and among copyright owners and persons entitled to obtain a compulsory license for covered activities, and common agents acting on behalf of such copyright owners or persons, including with respect to the administrative assessment established under this subsection.

(B) Limitation on common agent exemption.—Notwithstanding the antitrust exemption provided in subsection (c)(1)(D) and subparagraph (A) of this paragraph (except for the administrative assessment referenced in such subparagraph (A) and except as provided in paragraph (8)(C)), neither the mechanical licensing collective nor the digital licensee coordinator shall serve as a common agent with respect to the establishment of royalty rates or terms under this section.

(C) Antitrust exemption for administrative activities.—Notwithstanding any provision of the antitrust laws, copyright owners and persons entitled to obtain a compulsory license under this section may designate the mechanical licensing collective to administer voluntary licenses for the reproduction or distribution of musical works in covered activities on behalf of such copyright owners and persons, subject to the following conditions:

(i) Each copyright owner shall establish the royalty rates and material terms of any such voluntary license individually and not in agreement, combination, or concert with any other copyright owner.

(ii) Each person entitled to obtain a compulsory license under this section shall establish the royalty rates and material terms of any such voluntary license individually and not in agreement, combination, or concert with any other digital music provider.

(iii) The mechanical licensing collective shall maintain the confidentiality of the voluntary licenses in accordance with the confidentiality provisions prescribed by the Register of Copyrights under paragraph (12)(C).

(D) Liability for good-faith activities.—The mechanical licensing collective shall not be liable to any person or entity based on a claim

arising from its good-faith administration of policies and procedures adopted and implemented to carry out the responsibilities described in subparagraphs (J) and (K) of paragraph (3), except to the extent of correcting an underpayment or overpayment of royalties as provided in paragraph (3)(L)(i)(VI), but the collective may participate in a legal proceeding as a stakeholder party if the collective is holding funds that are the subject of a dispute between copyright owners. For purposes of this subparagraph, the term "good-faith administration" means administration in a manner that is not grossly negligent.

(E) Preemption of state property laws.—The holding and distribution of funds by the mechanical licensing collective in accordance with this subsection shall supersede and preempt any State law (including common law) concerning escheatment or abandoned property, or any analogous provision, that might otherwise apply.

(F) Rule of construction.—Except as expressly provided in this subsection, nothing in this subsection shall negate or limit the ability of any person to pursue an action in Federal court against the mechanical licensing collective or any other person based upon a claim arising under this title or other applicable law.

(12) Regulations.—

(A) Adoption by register of copyrights and copyright royalty judges.—The Register of Copyrights may conduct such proceedings and adopt such regulations as may be necessary or appropriate to effectuate the provisions of this subsection, except for regulations concerning proceedings before the Copyright Royalty Judges to establish the administrative assessment, which shall be adopted by the Copyright Royalty Judges.

(B) Judicial review of regulations.—Except as provided in paragraph (7)(D)(vii), regulations adopted under this subsection shall be subject to judicial review pursuant to chapter 7 of title 5.

(C) Protection of confidential information.—The Register of Copyrights shall adopt regulations to provide for the appropriate procedures to ensure that confidential, private, proprietary, or privileged information contained in the records of the mechanical licensing collective and digital licensee coordinator is not improperly disclosed or used, including through any disclosure or use by the board of directors or personnel of either entity, and specifically including the unclaimed royalties oversight committee and the dispute resolution committee of the mechanical licensing collective.

(13) Savings clauses.—

(A) Limitation on activities and rights covered.—This subsection applies solely to uses of musical works subject to licensing under this section. The blanket license shall not be construed to extend or apply to

activities other than covered activities or to rights other than the exclusive rights of reproduction and distribution licensed under this section, or serve or act as the basis to extend or expand the compulsory license under this section to activities and rights not covered by this section on the day before the enactment date.

(B) Rights of public performance not affected.—The rights, protections, and immunities granted under this subsection, the data concerning musical works collected and made available under this subsection, and the definitions under subsection (e) shall not extend to, limit, or otherwise affect any right of public performance in a musical work.

(e) Definitions.—As used in this section:

(1) Accrued interest.—The term "accrued interest" means interest accrued on accrued royalties, as described in subsection (d)(3)(H)(ii).

(2) Accrued royalties.—The term "accrued royalties" means royalties accrued for the reproduction or distribution of a musical work (or share thereof) in a covered activity, calculated in accordance with the applicable royalty rate under this section.

(3) Administrative assessment.—The term "administrative assessment" means the fee established pursuant to subsection (d)(7)(D).

(4) Audit.—The term "audit" means a royalty compliance examination to verify the accuracy of royalty payments, or the conduct of such an examination, as applicable.

(5) Blanket license.—The term "blanket license" means a compulsory license described in subsection (d)(1)(A) to engage in covered activities.

(6) Collective total costs.—The term "collective total costs"—

(A) means the total costs of establishing, maintaining, and operating the mechanical licensing collective to fulfill its statutory functions, including—

(i) startup costs;

(ii) financing, legal, audit, and insurance costs;

(iii) investments in information technology, infrastructure, and other long-term resources;

(iv) outside vendor costs;

(v) costs of licensing, royalty administration, and enforcement of rights;

(vi) costs of bad debt; and

(vii) costs of automated and manual efforts to identify and locate copyright owners of musical works (and shares of such musical works) and match sound recordings to the musical works the sound recordings embody; and

(B) does not include any added costs incurred by the mechanical licensing collective to provide services under voluntary licenses.

(7) Covered activity.—The term "covered activity" means the activity of making a digital phonorecord delivery of a musical work, including in the form of a permanent download, limited download, or interactive stream, where such activity qualifies for a compulsory license under this section.

(8) Digital music provider.—The term "digital music provider" means a person (or persons operating under the authority of that person) that, with respect to a service engaged in covered activities—

(A) has a direct contractual, subscription, or other economic relationship with end users of the service, or, if no such relationship with end users exists, exercises direct control over the provision of the service to end users;

(B) is able to fully report on any revenues and consideration generated by the service; and

(C) is able to fully report on usage of sound recordings of musical works by the service (or procure such reporting).

(9) Digital licensee coordinator.—The term "digital licensee coordinator" means the entity most recently designated pursuant to subsection (d)(5).

(10) Digital phonorecord delivery.—The term "digital phonorecord delivery" means each individual delivery of a phonorecord by digital transmission of a sound recording that results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording, regardless of whether the digital transmission is also a public performance of the sound recording or any musical work embodied therein, and includes a permanent download, a limited download, or an interactive stream. A digital phonorecord delivery does not result from a real-time, noninteractive subscription transmission of a sound recording where no reproduction of the sound recording or the musical work embodied therein is made from the inception of the transmission through to its receipt by the transmission recipient in order to make the sound recording audible. A digital phonorecord delivery does not include the digital transmission of sounds accompanying a motion picture or other audiovisual work as defined in section 101.

(11) Enactment date.—The term "enactment date" means the date of the enactment of the Musical Works Modernization Act.

(12) Individual download license.—The term "individual download license" means a compulsory license obtained by a record company to make and distribute, or authorize the making and distribution of, permanent downloads embodying a specific individual musical work.

(13) Interactive stream.—The term "interactive stream" means a digital transmission of a sound recording of a musical work in the form of a stream, where the performance of the sound recording by means of such transmission is not exempt under section 114(d)(1) and does not in itself, or as a result of a program in which it is included, qualify for statutory licensing under section 114(d)(2). An interactive stream is a digital phonorecord delivery.

(14) Interested.—The term "interested", as applied to a party seeking to participate in a proceeding under subsection (d)(7)(D), is a party as to which the Copyright Royalty Judges have not determined that the party lacks a significant interest in such proceeding.

(15) License availability date.—The term "license availability date" means January 1 following the expiration of the 2-year period beginning on the enactment date.

(16) Limited download.—The term "limited download" means a digital transmission of a sound recording of a musical work in the form of a download, where such sound recording is accessible for listening only for a limited amount of time or specified number of times.

(17) Matched.—The term "matched", as applied to a musical work (or share thereof), means that the copyright owner of such work (or share thereof) has been identified and located.

(18) Mechanical licensing collective.—The term "mechanical licensing collective" means the entity most recently designated as such by the Register of Copyrights under subsection (d)(3).

(19) Mechanical licensing collective budget.—The term "mechanical licensing collective budget" means a statement of the financial position of the mechanical licensing collective for a fiscal year or quarter thereof based on estimates of expenditures during the period and proposals for financing those expenditures, including a calculation of the collective total costs.

(20) Musical works database.—The term "musical works database" means the database described in subsection (d)(3)(E).

(21) Nonprofit.—The term "nonprofit" means a nonprofit created or organized in a State.

(22) Notice of license.—The term "notice of license" means a notice from a digital music provider provided under subsection (d)(2)(A) for purposes of obtaining a blanket license.

(23) Notice of nonblanket activity.—The term "notice of nonblanket activity" means a notice from a significant nonblanket licensee provided under subsection (d)(6)(A) for purposes of notifying the mechanical licensing collective that the licensee has been engaging in covered activities.

(24) Permanent download.—The term "permanent download" means a digital transmission of a sound recording of a musical work in the form of a download, where such sound recording is accessible for listening without restriction as to the amount of time or number of times it may be accessed.

(25) Qualified auditor.—The term "qualified auditor" means an independent, certified public accountant with experience performing music royalty audits.

(26) Record company.—The term "record company" means an entity that invests in, produces, and markets sound recordings of musical works, and

distributes such sound recordings for remuneration through multiple sales channels, including a corporate affiliate of such an entity engaged in distribution of sound recordings.

(27) Report of usage.—The term "report of usage" means a report reflecting an entity's usage of musical works in covered activities described in subsection (d)(4)(A).

(28) Required matching efforts.—The term "required matching efforts" means efforts to identify and locate copyright owners of musical works as described in subsection (d)(10)(B)(i).

(29) Service.—The term "service", as used in relation to covered activities, means any site, facility, or offering by or through which sound recordings of musical works are digitally transmitted to members of the public.

(30) Share.—The term "share", as applied to a musical work, means a fractional ownership interest in such work.

(31) Significant nonblanket licensee.—The term "significant nonblanket licensee"—

(A) means an entity, including a group of entities under common ownership or control that, acting under the authority of one or more voluntary licenses or individual download licenses, offers a service engaged in covered activities, and such entity or group of entities—

(i) is not currently operating under a blanket license and is not obligated to provide reports of usage reflecting covered activities under subsection (d)(4)(A);

(ii) has a direct contractual, subscription, or other economic relationship with end users of the service or, if no such relationship with end users exists, exercises direct control over the provision of the service to end users; and

(iii) either—

(I) on any day in a calendar month, makes more than 5,000 different sound recordings of musical works available through such service; or

(II) derives revenue or other consideration in connection with such covered activities greater than $50,000 in a calendar month, or total revenue or other consideration greater than $500,000 during the preceding 12 calendar months; and

(B) does not include—

(i) an entity whose covered activity consists solely of free-to-the-user streams of segments of sound recordings of musical works that do not exceed 90 seconds in length, are offered only to facilitate a licensed use of musical works that is not a covered activity, and have no revenue directly attributable to such streams constituting the covered activity; or

(ii) a 'public broadcasting entity' as defined in section 118(f).

(32) Songwriter. — The term "songwriter" means the author of all or part of a musical work, including a composer or lyricist.

(33) State. — The term "State" means each State of the United States, the District of Columbia, and each territory or possession of the United States.

(34) Unclaimed accrued royalties. — The term "unclaimed accrued royalties" means accrued royalties eligible for distribution under subsection (d)(3)(J).

(35) Unmatched. — The term "unmatched", as applied to a musical work (or share thereof), means that the copyright owner of such work (or share thereof) has not been identified or located.

(36) Voluntary license. — The term "voluntary license" means a license for use of a musical work (or share thereof) other than a compulsory license obtained under this section.

§ 116 · Negotiated licenses for public performances by means of coin-operated phonorecord players[54]

(a) Applicability of Section. — This section applies to any nondramatic musical work embodied in a phonorecord.

(b) Negotiated Licenses. —

(1) Authority for negotiations. — Any owners of copyright in works to which this section applies and any operators of coin-operated phonorecord players may negotiate and agree upon the terms and rates of royalty payments for the performance of such works and the proportionate division of fees paid among copyright owners, and may designate common agents to negotiate, agree to, pay, or receive such royalty payments.

(2) Chapter 8 proceeding. — Parties not subject to such a negotiation may have the terms and rates and the division of fees described in paragraph (1) determined in a proceeding in accordance with the provisions of chapter 8.

(c) License Agreements Superior to Determinations by Copyright Royalty Judges. — License agreements between one or more copyright owners and one or more operators of coin-operated phonorecord players, which are negotiated in accordance with subsection (b), shall be given effect in lieu of any otherwise applicable determination by the Copyright Royalty Judges.

(d) Definitions. — As used in this section, the following terms mean the following:

(1) A "coin-operated phonorecord player" is a machine or device that —

(A) is employed solely for the performance of nondramatic musical works by means of phonorecords upon being activated by the insertion of coins, currency, tokens, or other monetary units or their equivalent;

(B) is located in an establishment making no direct or indirect charge for admission;

(C) is accompanied by a list which is comprised of the titles of all the musical works available for performance on it, and is affixed to the phonorecord player or posted in the establishment in a prominent position where it can be readily examined by the public; and

(D) affords a choice of works available for performance and permits the choice to be made by the patrons of the establishment in which it is located.

(2) An "operator" is any person who, alone or jointly with others—

(A) owns a coin-operated phonorecord player;

(B) has the power to make a coin-operated phonorecord player available for placement in an establishment for purposes of public performance; or

(C) has the power to exercise primary control over the selection of the musical works made available for public performance on a coin-operated phonorecord player.

§ 117 · Limitations on exclusive rights: Computer programs[55]

(a) Making of Additional Copy or Adaptation by Owner of Copy.—Notwithstanding the provisions of section 106, it is not an infringement for the owner of a copy of a computer program to make or authorize the making of another copy or adaptation of that computer program provided:

(1) that such a new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner, or

(2) that such new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.

(b) Lease, Sale, or Other Transfer of Additional Copy or Adaptation.—Any exact copies prepared in accordance with the provisions of this section may be leased, sold, or otherwise transferred, along with the copy from which such copies were prepared, only as part of the lease, sale, or other transfer of all rights in the program. Adaptations so prepared may be transferred only with the authorization of the copyright owner.

(c) Machine Maintenance or Repair.—Notwithstanding the provisions of section 106, it is not an infringement for the owner or lessee of a machine to make or authorize the making of a copy of a computer program if such copy is made solely by virtue of the activation of a machine that lawfully contains an authorized copy of the computer program, for purposes only of maintenance or repair of that machine, if—

(1) such new copy is used in no other manner and is destroyed immediately after the maintenance or repair is completed; and

(2) with respect to any computer program or part thereof that is not necessary for that machine to be activated, such program or part thereof is not accessed or used other than to make such new copy by virtue of the activation of the machine.

(d) Definitions. — For purposes of this section —

(1) the "maintenance" of a machine is the servicing of the machine in order to make it work in accordance with its original specifications and any changes to those specifications authorized for that machine; and

(2) the "repair" of a machine is the restoring of the machine to the state of working in accordance with its original specifications and any changes to those specifications authorized for that machine.

§ 118 · Scope of exclusive rights: Use of certain works in connection with noncommercial broadcasting[56]

(a) The exclusive rights provided by section 106 shall, with respect to the works specified by subsection (b) and the activities specified by subsection (d), be subject to the conditions and limitations prescribed by this section.

(b) Notwithstanding any provision of the antitrust laws, any owners of copyright in published nondramatic musical works and published pictorial, graphic, and sculptural works and any public broadcasting entities, respectively, may negotiate and agree upon the terms and rates of royalty payments and the proportionate division of fees paid among various copyright owners, and may designate common agents to negotiate, agree to, pay, or receive payments.

(1) Any owner of copyright in a work specified in this subsection or any public broadcasting entity may submit to the Copyright Royalty Judges proposed licenses covering such activities with respect to such works.

(2) License agreements voluntarily negotiated at any time between one or more copyright owners and one or more public broadcasting entities shall be given effect in lieu of any determination by the Librarian of Congress or the Copyright Royalty Judges, if copies of such agreements are filed with the Copyright Royalty Judges within 30 days of execution in accordance with regulations that the Copyright Royalty Judges shall issue.

(3) Voluntary negotiation proceedings initiated pursuant to a petition filed under section 804(a) for the purpose of determining a schedule of terms and rates of royalty payments by public broadcasting entities to owners of copyright in works specified by this subsection and the proportionate division of fees paid among various copyright owners shall cover the 5-year period beginning on January 1 of the second year following the year in which the

petition is filed. The parties to each negotiation proceeding shall bear their own costs.

(4) In the absence of license agreements negotiated under paragraph (2) or (3), the Copyright Royalty Judges shall, pursuant to chapter 8, conduct a proceeding to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (2), shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether such copyright owners have submitted proposals to the Copyright Royalty Judges. In establishing such rates and terms the Copyright Royalty Judges may consider the rates for comparable circumstances under voluntary license agreements negotiated as provided in paragraph (2) or (3). The Copyright Royalty Judges shall also establish requirements by which copyright owners may receive reasonable notice of the use of their works under this section, and under which records of such use shall be kept by public broadcasting entities.

(c) Subject to the terms of any voluntary license agreements that have been negotiated as provided by subsection (b)(2) or (3), a public broadcasting entity may, upon compliance with the provisions of this section, including the rates and terms established by the Copyright Royalty Judges under subsection (b)(4), engage in the following activities with respect to published nondramatic musical works and published pictorial, graphic, and sculptural works:

(1) performance or display of a work by or in the course of a transmission made by a noncommercial educational broadcast station referred to in subsection (f); and

(2) production of a transmission program, reproduction of copies or phonorecords of such a transmission program, and distribution of such copies or phonorecords, where such production, reproduction, or distribution is made by a nonprofit institution or organization solely for the purpose of transmissions specified in paragraph (1); and

(3) the making of reproductions by a governmental body or a nonprofit institution of a transmission program simultaneously with its transmission as specified in paragraph (1), and the performance or display of the contents of such program under the conditions specified by paragraph (1) of section 110, but only if the reproductions are used for performances or displays for a period of no more than seven days from the date of the transmission specified in paragraph (1), and are destroyed before or at the end of such period. No person supplying, in accordance with paragraph (2), a reproduction of a transmission program to governmental bodies or nonprofit institutions under this paragraph shall have any liability as a result of failure of such body or institution to destroy such reproduction: *Provided*, That it shall have notified such body or institution of the requirement for such destruction pursuant to this paragraph: *And provided further*, That if such body or

institution itself fails to destroy such reproduction it shall be deemed to have infringed.

(d) Except as expressly provided in this subsection, this section shall have no applicability to works other than those specified in subsection (b). Owners of copyright in nondramatic literary works and public broadcasting entities may, during the course of voluntary negotiations, agree among themselves, respectively, as to the terms and rates of royalty payments without liability under the antitrust laws. Any such terms and rates of royalty payments shall be effective upon filing with the Copyright Royalty Judges, in accordance with regulations that the Copyright Royalty Judges shall prescribe as provided in section 803(b)(6).

(e) Nothing in this section shall be construed to permit, beyond the limits of fair use as provided by section 107, the unauthorized dramatization of a nondramatic musical work, the production of a transmission program drawn to any substantial extent from a published compilation of pictorial, graphic, or sculptural works, or the unauthorized use of any portion of an audiovisual work.

(f) As used in this section, the term "public broadcasting entity" means a noncommercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution or organization engaged in the activities described in paragraph (2) of subsection (c).

§ 119 · Limitations on exclusive rights: Secondary transmissions of distant television programming by satellite[57]

(a) Secondary Transmissions by Satellite Carriers.—

(1) Non-network stations.—Subject to the provisions of paragraphs (3), (4), and (6) of this subsection and section 114(d), secondary transmissions of a performance or display of a work embodied in a primary transmission made by a non-network station shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing or for viewing in a commercial establishment, with regard to secondary transmissions the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals, and the carrier makes a direct or indirect charge for each retransmission service to each subscriber receiving the secondary transmission or to a distributor that has contracted with the carrier for direct or indirect delivery of the secondary transmission to the public for private home viewing or for viewing in a commercial establishment.[58]

(2) Network stations.—

(A) In general.—Subject to the provisions of subparagraph (B) of this paragraph and paragraphs (3), (4), (5), and (6) of this subsection and section 114(d), secondary transmissions of a performance or display of a work embodied in a primary transmission made by a network station shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, with regard to secondary transmissions the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals, the carrier makes a direct or indirect charge for such retransmission service to each subscriber receiving the secondary transmission, and the carrier provides local-into-local service to all DMAs. Failure to reach an agreement with a network station to retransmit the signals of the station shall not be construed to affect compliance with providing local-into-local service to all DMAs if the satellite carrier has the capability to retransmit such signals when an agreement is reached.

(B) Secondary transmissions to unserved households.—

(i) In general.—The statutory license provided for in subparagraph (A) shall be limited to secondary transmissions of the signals of no more than two network stations in a single day for each television network to persons who reside in unserved households.

(ii) Short markets.—In the case of secondary transmissions to households located in short markets, subject to clause (i), the statutory license shall be further limited to secondary transmissions of only those primary transmissions of network stations that embody the programming of networks not offered on the primary stream or the multicast stream transmitted by any network station in that market.

(C) Submission of subscriber lists to networks.—

(i) Initial lists.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to subparagraph (A) shall, not later than 90 days after commencing such secondary transmissions, submit to the network that owns or is affiliated with the network station a list identifying (by name and address, including street or rural route number, city, State, and 9-digit zip code) all subscribers to which the satellite carrier makes secondary transmissions of that primary transmission to subscribers in unserved households.

(ii) Monthly lists.—After the submission of the initial lists under clause (i), the satellite carrier shall, not later than the 15th of each month, submit to the network a list, aggregated by designated market area, identifying (by name and address, including street or rural route number, city, State, and 9-digit zip code) any persons who have been added or

dropped as subscribers under clause (i) since the last submission under this subparagraph.

(iii) Use of subscriber information.—Subscriber information submitted by a satellite carrier under this subparagraph may be used only for purposes of monitoring compliance by the satellite carrier with this subsection.

(iv) Applicability.—The submission requirements of this subparagraph shall apply to a satellite carrier only if the network to which the submissions are to be made places on file with the Register of Copyrights a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.

(3) Noncompliance with reporting and payment requirements.—Notwithstanding the provisions of paragraphs (1) and (2), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a non-network station or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, where the satellite carrier has not deposited the statement of account and royalty fee required by subsection (b), or has failed to make the submissions to networks required by paragraph (2)(C).

(4) Willful alterations.—Notwithstanding the provisions of paragraphs (1) and (2), the secondary transmission to the public by a satellite carrier of a performance or display of a work embodied in a primary transmission made by a non-network station or a network station is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and section 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcement transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal.

(5) Violation of territorial restrictions on statutory license for network stations.—

(A) Individual violations.—The willful or repeated secondary transmission by a satellite carrier of a primary transmission made by a network station and embodying a performance or display of a work to a subscriber who is not eligible to receive the transmission under this section is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506, except that—

(i) no damages shall be awarded for such act of infringement if the satellite carrier took corrective action by promptly withdrawing service from the ineligible subscriber, and

(ii) any statutory damages shall not exceed $250 for such subscriber for each month during which the violation occurred.

(B) Pattern of violations.—If a satellite carrier engages in a willful or repeated pattern or practice of delivering a primary transmission made by a network station and embodying a performance or display of a work to subscribers who are not eligible to receive the transmission under this section, then in addition to the remedies set forth in subparagraph (A)—

(i) if the pattern or practice has been carried out on a substantially nationwide basis, the court shall order a permanent injunction barring the secondary transmission by the satellite carrier, for private home viewing, of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed $2,500,000 for each 3-month period during which the pattern or practice was carried out; and

(ii) if the pattern or practice has been carried out on a local or regional basis, the court shall order a permanent injunction barring the secondary transmission, for private home viewing in that locality or region, by the satellite carrier of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed $2,500,000 for each 6-month period during which the pattern or practice was carried out.

The court shall direct one half of any statutory damages ordered under clause (i) to be deposited with the Register of Copyrights for distribution to copyright owners pursuant to subsection (b). The Copyright Royalty Judges shall issue regulations establishing procedures for distributing such funds, on a proportional basis, to copyright owners whose works were included in the secondary transmissions that were the subject of the statutory damages.

(C) Previous subscribers excluded.—Subparagraphs (A) and (B) do not apply to secondary transmissions by a satellite carrier to persons who subscribed to receive such secondary transmissions from the satellite carrier or a distributor before November 16, 1988.

(D) Burden of proof.[59]—In any action brought under this paragraph, the satellite carrier shall have the burden of proving that its secondary transmission of a primary transmission by a network station is to a subscriber who is eligible to receive the secondary transmission under this section.

(6) Discrimination by a satellite carrier.—Notwithstanding the provisions of paragraph (1), the willful or repeated secondary transmission to the public by a satellite carrier of a performance or display of a work embodied in a primary transmission made by a non-network station or a network station

is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, if the satellite carrier unlawfully discriminates against a distributor.[60]

(7) Geographic limitation on secondary transmissions.—The statutory license created by this section shall apply only to secondary transmissions to households located in the United States.

(8) Service to recreational vehicles and commercial trucks.—

(A) Exemption.—

(i) In general.—For purposes of this subsection, and subject to clauses (ii) and (iii), the term "unserved household" shall include—

(I) recreational vehicles as defined in regulations of the Secretary of Housing and Urban Development under section 3282.8 of title 24, Code of Federal Regulations; and

(II) commercial trucks that qualify as commercial motor vehicles under regulations of the Secretary of Transportation under section 383.5 of title 49, Code of Federal Regulations.

(ii) Limitation.—Clause (i) shall apply only to a recreational vehicle or commercial truck if any satellite carrier that proposes to make a secondary transmission of a network station to the operator of such a recreational vehicle or commercial truck complies with the documentation requirements under subparagraphs (B) and (C).

(iii) Exclusion.—For purposes of this subparagraph, the terms "recreational vehicle" and "commercial truck" shall not include any fixed dwelling, whether a mobile home or otherwise.

(B) Documentation requirements.—A recreational vehicle or commercial truck shall be deemed to be an unserved household beginning 10 days after the relevant satellite carrier provides to the network that owns or is affiliated with the network station that will be secondarily transmitted to the recreational vehicle or commercial truck the following documents:

(i) Declaration.—A signed declaration by the operator of the recreational vehicle or commercial truck that the satellite dish is permanently attached to the recreational vehicle or commercial truck, and will not be used to receive satellite programming at any fixed dwelling.

(ii) Registration.—In the case of a recreational vehicle, a copy of the current State vehicle registration for the recreational vehicle.

(iii) Registration and license.—In the case of a commercial truck, a copy of—

(I) the current State vehicle registration for the truck; and

(II) a copy of a valid, current commercial driver's license, as defined in regulations of the Secretary of Transportation under section 383 of title 49, Code of Federal Regulations, issued to the operator.

(C) Updated documentation requirements.—If a satellite carrier wishes to continue to make secondary transmissions to a recreational vehicle or commercial truck for more than a 2-year period, that carrier shall provide each network, upon request, with updated documentation in the form described under subparagraph (B) during the 90 days before expiration of that 2-year period.

(9) Statutory license contingent on compliance with fcc rules and remedial steps.—Notwithstanding any other provision of this section, the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission embodying a performance or display of a work made by a broadcast station licensed by the Federal Communications Commission is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, if, at the time of such transmission, the satellite carrier is not in compliance with the rules, regulations, and authorizations of the Federal Communications Commission concerning the carriage of television broadcast station signals.[61]

(10) Restricted transmission of out-of-state distant network signals into certain markets.—

(A) Out-of-state network affiliates.—Notwithstanding any other provision of this title, the statutory license in this subsection and subsection (b) shall not apply to any secondary transmission of the primary transmission of a network station located outside of the State of Alaska to any subscriber in that State to whom the secondary transmission of the primary transmission of a television station located in that State is made available by the satellite carrier pursuant to section 122.

(B) Exception.—The limitation in subparagraph (A) shall not apply to the secondary transmission of the primary transmission of a digital signal of a network station located outside of the State of Alaska if at the time that the secondary transmission is made, no television station licensed to a community in the State and affiliated with the same network makes primary transmissions of a digital signal.

(b) Deposit of Statements and Fees; Verification Procedures.—

(1) Deposits with the register of copyrights.—A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall prescribe by regulation—

(A) a statement of account, covering the preceding 6-month period, specifying the names and locations of all non-network and network stations whose signals were retransmitted, at any time during that period, to subscribers as described in subsections (a)(1) and (a)(2), the total number of subscribers that received such retransmissions, and such other data as the Register of Copyrights may from time to time prescribe by regulation;

(B) a royalty fee payable to copyright owners pursuant to paragraph (4) for that 6-month period, computed by multiplying the total number of subscribers receiving each secondary transmission of a primary stream or multicast stream of each non-network station or network station during each calendar year month by the appropriate rate in effect under this subsection; and

(C) a filing fee, as determined by the Register of Copyrights pursuant to section 708(a).

(2) Verification of accounts and fee payments.—The Register of Copyrights shall issue regulations to permit interested parties to verify and audit the statements of account and royalty fees submitted by satellite carriers under this subsection.

(3) Investment of fees.—The Register of Copyrights shall receive all fees (including the filing fee specified in paragraph (1)(c)) deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section (other than the costs deducted under paragraph (5)), shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing securities of the United States for later distribution with interest by the Librarian of Congress as provided by this title.

(4) Persons to whom fees are distributed.—The royalty fees deposited under paragraph (3) shall, in accordance with the procedures provided by paragraph (5), be distributed to those copyright owners whose works were included in a secondary transmission made by a satellite carrier during the applicable 6-month accounting period and who file a claim with the Copyright Royalty Judges under paragraph (5).

(5) Procedures for distribution.—The royalty fees deposited under paragraph (3) shall be distributed in accordance with the following procedures:

(A) Filing of claims for fees.—During the month of July in each year, each person claiming to be entitled to statutory license fees for secondary transmissions shall file a claim with the Copyright Royalty Judges, in accordance with requirements that the Copyright Royalty Judges shall prescribe by regulation. For purposes of this paragraph, any claimants may agree among themselves as to the proportionate division of statutory license fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

(B) Determination of controversy; distributions.—After the first day of August of each year, the Copyright Royalty Judges shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Copyright Royalty Judges determine that no such controversy exists, the Copyright Royalty Judges shall authorize the Librarian of

Congress to proceed to distribute such fees to the copyright owners entitled to receive them, or to their designated agents, subject to the deduction of reasonable administrative costs under this section. If the Copyright Royalty Judges find the existence of a controversy, the Copyright Royalty Judges shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

(C) Withholding of fees during controversy.—During the pendency of any proceeding under this subsection, the Copyright Royalty Judges shall have the discretion to authorize the Librarian of Congress to proceed to distribute any amounts that are not in controversy.

(c) Adjustment of Royalty Fees.—

(1) Applicability and determination of royalty fees for signals.—

(A) Initial fee.—The appropriate fee for purposes of determining the royalty fee under subsection (b)(1)(B) for the secondary transmission of the primary transmissions of network stations and non-network stations shall be the appropriate fee set forth in part 258 of title 37, Code of Federal Regulations, as in effect on July 1, 2009, as modified under this paragraph.

(B) Fee set by voluntary negotiation.—On or before June 1, 2010, the Copyright Royalty Judges shall cause to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers for the secondary transmission of the primary transmission of network stations and non-network stations under subsection (b)(1)(B).

(C) Negotiations.—Satellite carriers, distributors, and copyright owners entitled to royalty fees under this section shall negotiate in good faith in an effort to reach a voluntary agreement or agreements for the payment of royalty fees. Any such satellite carriers, distributors and copyright owners may at any time negotiate and agree to the royalty fee, and may designate common agents to negotiate, agree to, or pay such fees. If the parties fail to identify common agents, the Copyright Royalty Judges shall do so, after requesting recommendations from the parties to the negotiation proceeding. The parties to each negotiation proceeding shall bear the cost thereof.

(D) Agreements binding on parties; filing of agreements; public notice.—

(i) Voluntary agreements; filing.—Voluntary agreements negotiated at any time in accordance with this paragraph shall be binding upon all satellite carriers, distributors, and copyright owners that are parties thereto. Copies of such agreements shall be filed with the Copyright Office within 30 days after execution in accordance with regulations that the Register of Copyrights shall prescribe.

(ii) Procedure for adoption of fees.—

(I) Publication of notice.—Within 10 days after publication in the Federal Register of a notice of the initiation of voluntary negotiation proceedings, parties who have reached a voluntary agreement may request that the royalty fees in that agreement be applied to all satellite carriers, distributors, and copyright owners without convening a proceeding under subparagraph (F).

(II) Public notice of fees.—Upon receiving a request under subclause (I), the Copyright Royalty Judges shall immediately provide public notice of the royalty fees from the voluntary agreement and afford parties an opportunity to state that they object to those fees.

(III) Adoption of fees.—The Copyright Royalty Judges shall adopt the royalty fees from the voluntary agreement for all satellite carriers, distributors, and copyright owners without convening the proceeding under subparagraph (F) unless a party with an intent to participate in that proceeding and a significant interest in the outcome of that proceeding objects under subclause (II).

(E) Period agreement is in effect.—The obligation to pay the royalty fees established under a voluntary agreement which has been filed with the Copyright Royalty Judges in accordance with this paragraph shall become effective on the date specified in the agreement and shall remain in effect, in accordance with the terms of the agreement until the subscriber for which the royalty is payable is no longer eligible to receive a secondary transmission pursuant to the license under this section.[62]

(F) Fee set by copyright royalty judges proceeding.—

(i) Notice of initiation of the proceeding.—On or before September 1, 2010, the Copyright Royalty Judges shall cause notice to be published in the Federal Register of the initiation of a proceeding for the purpose of determining the royalty fees to be paid for the secondary transmission of the primary transmissions of network stations and non-network stations under subsection (b)(1)(B) by satellite carriers and distributors—

(I) in the absence of a voluntary agreement filed in accordance with subparagraph (D) that establishes royalty fees to be paid by all satellite carriers and distributors; or

(II) if an objection to the fees from a voluntary agreement submitted for adoption by the Copyright Royalty Judges to apply to all satellite carriers, distributors, and copyright owners is received under subparagraph (D) from a party with an intent to participate in the proceeding and a significant interest in the outcome of that proceeding.

Such proceeding shall be conducted under chapter 8.

(ii) Establishment of royalty fees.—In determining royalty fees under this subparagraph, the Copyright Royalty Judges shall establish fees

for the secondary transmissions of the primary transmissions of network stations and non-network stations that most clearly represent the fair market value of secondary transmissions, except that the Copyright Royalty Judges shall adjust royalty fees to account for the obligations of the parties under any applicable voluntary agreement filed with the Copyright Royalty Judges in accordance with subparagraph (D). In determining the fair market value, the Judges shall base their decision on economic, competitive, and programming information presented by the parties, including—

(I) the competitive environment in which such programming is distributed, the cost of similar signals in similar private and compulsory license marketplaces, and any special features and conditions of the retransmission marketplace;

(II) the economic impact of such fees on copyright owners and satellite carriers; and

(III) the impact on the continued availability of secondary transmissions to the public.

(iii) Effective date for decision of copyright royalty judges.—The obligation to pay the royalty fees established under a determination that is made by the Copyright Royalty Judges in a proceeding under this paragraph shall be effective as of January 1, 2010.

(iv) Persons subject to royalty fees.—The royalty fees referred to in clause (iii) shall be binding on all satellite carriers, distributors and copyright owners, who are not party to a voluntary agreement filed with the Copyright Office under subparagraph (D).

(2) Annual royalty fee adjustment.—Effective January 1 of each year, the royalty fee payable under subsection (b)(1)(B) for the secondary transmission of the primary transmissions of network stations and non-network stations shall be adjusted by the Copyright Royalty Judges to reflect any changes occurring in the cost of living as determined by the most recent Consumer Price Index (for all consumers and for all items) published by the Secretary of Labor before December 1 of the preceding year. Notification of the adjusted fees shall be published in the Federal Register at least 25 days before January 1.

(d) Definitions.—As used in this section—

(1) Distributor.—The term "distributor" means an entity that contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers or indirectly through other program distribution entities in accordance with the provisions of this section.

(2) Network station.—The term "network station" means—

(A) a television station licensed by the Federal Communications Commission, including any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station, that is owned or operated by, or affiliated with, one or more of the television networks in the United States that offer an interconnected program service on a regular basis for 15 or more hours per week to at least 25 of its affiliated television licensees in 10 or more States; or

(B) a noncommercial educational broadcast station (as defined in section 397 of the Communications Act of 1934).

(3) Primary network station.—The term "primary network station" means a network station that broadcasts or rebroadcasts the basic programming service of a particular national network.

(4) Primary transmission.—The term "primary transmission" has the meaning given that term in section 111(f) of this title.

(5) Private home viewing.—The term "private home viewing" means the viewing, for private use in a household by means of satellite reception equipment that is operated by an individual in that household and that serves only such household, of a secondary transmission delivered by a satellite carrier of a primary transmission of a television station licensed by the Federal Communications Commission.

(6) Satellite carrier.—The term "satellite carrier" means an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission and operates in the Fixed-Satellite Service under part 25 of title 47, Code of Federal Regulations, or the Direct Broadcast Satellite Service under part 100 of title 47, Code of Federal Regulations to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing pursuant to this section.

(7) Secondary transmission.—The term "secondary transmission" has the meaning given that term in section 111(f) of this title.

(8) Subscriber; subscribe.—

(A) Subscriber.—The term "subscriber" means a person or entity that receives a secondary transmission service from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

(B) Subscribe.—The term "subscribe" means to elect to become a subscriber.

(9) Non-network station.—The term "non-network station" means a television station, other than a network station, licensed by the Federal Communications Commission, that is secondarily transmitted by a satellite carrier.

(10) Unserved household.—The term "unserved household", with respect to a particular television network, means a household that—

(A) is a subscriber to whom subsection (a)(8) applies; or

(B) is a subscriber located in a short market.

(11) Local market.—The term "local market" has the meaning given such term under section 122(j).

(12) Commercial establishment.—The term "commercial establishment"—

(A) means an establishment used for commercial purposes, such as a bar, restaurant, private office, fitness club, oil rig, retail store, bank or other financial institution, supermarket, automobile or boat dealership, or any other establishment with a common business area; and

(B) does not include a multi-unit permanent or temporary dwelling where private home viewing occurs, such as a hotel, dormitory, hospital, apartment, condominium, or prison.

(13) Multicast stream.—The term "multicast stream" means a digital stream containing programming and program-related material affiliated with a television network, other than the primary stream.

(14) Primary stream.—The term "primary stream" means—

(A) the single digital stream of programming as to which a television broadcast station has the right to mandatory carriage with a satellite carrier under the rules of the Federal Communications Commission in effect on July 1, 2009; or

(B) if there is no stream described in subparagraph (A), then either—

(i) the single digital stream of programming associated with the network last transmitted by the station as an analog signal; or

(ii) if there is no stream described in clause (i), then the single digital stream of programming affiliated with the network that, as of July 1, 2009, had been offered by the television broadcast station for the longest period of time.

(15) Local-into-local service to all dmas.—The term "local-into-local service to all DMAs" has the meaning given such term in subsection (f)(7).

(16) Short market.—The term "short market" means a local market in which programming of one or more of the four most widely viewed television networks nationwide is not offered on either the primary stream or multicast stream transmitted by any network station in that market or is temporarily or permanently unavailable as a result of an act of god or other force majeure event beyond the control of the carrier.

(e) Expedited Consideration by Justice Department of Voluntary Agreements to Provide Satellite Secondary Transmissions to Local Markets.—

(1) In general.—In a case in which no satellite carrier makes available, to subscribers located in a local market, as defined in section 122(j)(2), the secondary transmission into that market of a primary transmission of one or more television broadcast stations licensed by the Federal Communications Commission, and two or more satellite carriers request a business review letter in accordance with section 50.6 of title 28, Code of Federal Regulations (as in effect on July 7, 2004), in order to assess the legality under the antitrust laws of proposed business conduct to make or carry out an agreement to provide such secondary transmission into such local market, the appropriate official of the Department of Justice shall respond to the request no later than 90 days after the date on which the request is received.

(2) Definition.—For purposes of this subsection, the term "antitrust laws"—

(A) has the meaning given that term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section 5 applies to unfair methods of competition; and

(B) includes any State law similar to the laws referred to in paragraph (1).

(f) Certain Waivers Granted to Providers of Local-into-Local Service to All DMAs.—

(1) Injunction waiver.—A court that issued an injunction pursuant to subsection (a)(5)(B) before the date of the enactment of this subsection shall waive such injunction if the court recognizes the entity against which the injunction was issued as a qualified carrier.

(2) Limited temporary waiver.—

(A) In general.—Upon a request made by a satellite carrier, a court that issued an injunction against such carrier under subsection (a)(5)(B) before the date of the enactment of this subsection shall waive such injunction with respect to the statutory license provided under subsection (a)(2) to the extent necessary to allow such carrier to make secondary transmissions of primary transmissions made by a network station to unserved households located in short markets in which such carrier was not providing local service pursuant to the license under section 122 as of December 31, 2009.

(B) Expiration of temporary waiver.—A temporary waiver of an injunction under subparagraph (A) shall expire after the end of the 120-day period beginning on the date such temporary waiver is issued unless extended for good cause by the court making the temporary waiver.

(C) Failure to provide local-into-local service to all dmas.—

(i) Failure to act reasonably in good faith.—If the court issuing a temporary waiver under subparagraph (A) determines that the satellite carrier that made the request for such waiver has failed to act reasonably or has failed to make a good faith effort to provide local-into-local service to all DMAs, such failure—

(I) is actionable as an act of infringement under section 501 and the court may in its discretion impose the remedies provided for in sections 502 through 506 and subsection (a)(6)(B) of this section; and

(II) shall result in the termination of the waiver issued under subparagraph (A).

(ii) Failure to provide local-into-local service.—If the court issuing a temporary waiver under subparagraph (A) determines that the satellite carrier that made the request for such waiver has failed to provide local-into-local service to all DMAs, but determines that the carrier acted reasonably and in good faith, the court may in its discretion impose financial penalties that reflect—

(I) the degree of control the carrier had over the circumstances that resulted in the failure;

(II) the quality of the carrier's efforts to remedy the failure; and

(III) the severity and duration of any service interruption.

(D) Single temporary waiver available.—An entity may only receive one temporary waiver under this paragraph.

(E) Short market defined.—For purposes of this paragraph, the term "short market" means a local market in which programming of one or more of the four most widely viewed television networks nationwide as measured on the date of the enactment of this subsection is not offered on the primary stream transmitted by any local television broadcast station.

(3) Establishment of qualified carrier recognition.—

(A) Statement of eligibility.—An entity seeking to be recognized as a qualified carrier under this subsection shall file a statement of eligibility with the court that imposed the injunction. A statement of eligibility must include—

(i) an affidavit that the entity is providing local-into-local service to all DMAs;

(ii) a motion for a waiver of the injunction;

(iii) a motion that the court appoint a special master under Rule 53 of the Federal Rules of Civil Procedure;

(iv) an agreement by the carrier to pay all expenses incurred by the special master under paragraph (4)(B)(ii); and

(v) a certification issued pursuant to section 342(a) of Communications Act of 1934.

(B) Grant of recognition as a qualified carrier.—Upon receipt of a statement of eligibility, the court shall recognize the entity as a qualified carrier and issue the waiver under paragraph (1). Upon motion pursuant to subparagraph (A)(iii), the court shall appoint a special master to conduct the examination and provide a report to the court as provided in paragraph (4)(B).

(C) Voluntary termination.—At any time, an entity recognized as a qualified carrier may file a statement of voluntary termination with the court certifying that it no longer wishes to be recognized as a qualified carrier. Upon receipt of such statement, the court shall reinstate the injunction waived under paragraph (1).

(D) Loss of recognition prevents future recognition.—No entity may be recognized as a qualified carrier if such entity had previously been recognized as a qualified carrier and subsequently lost such recognition or voluntarily terminated such recognition under subparagraph (C).

(4) Qualified carrier obligations and compliance.—

(A) Continuing obligations.—

(i) In general.—An entity recognized as a qualified carrier shall continue to provide local-into-local service to all DMAs.

(ii) Cooperation with compliance examination.—An entity recognized as a qualified carrier shall fully cooperate with the special master appointed by the court under paragraph (3)(B) in an examination set forth in subparagraph (B).

(B) Qualified carrier compliance examination.—

(i) Examination and report.—A special master appointed by the court under paragraph (3)(B) shall conduct an examination of, and file a report on, the qualified carrier's compliance with the royalty payment and household eligibility requirements of the license under this section. The report shall address the qualified carrier's conduct during the period beginning on the date on which the qualified carrier is recognized as such under paragraph (3)(B) and ending on April 30, 2012.

(ii) Records of qualified carrier.—Beginning on the date that is one year after the date on which the qualified carrier is recognized as such under paragraph (3)(B), but not later than December 1, 2011, the qualified carrier shall provide the special master with all records that the special master considers to be directly pertinent to the following requirements under this section:

(I) Proper calculation and payment of royalties under the statutory license under this section.

(II) Provision of service under this license to eligible subscribers only.

(iii) Submission of report.—The special master shall file the report required by clause (i) not later than July 24, 2012, with the court referred to in paragraph (1) that issued the injunction, and the court shall transmit a copy of the report to the Register of Copyrights, the Committees on the Judiciary and on Energy and Commerce of the House of Representatives, and the Committees on the Judiciary and on Commerce, Science, and Transportation of the Senate.

(iv) Evidence of infringement.—The special master shall include in the report a statement of whether the examination by the special master indicated that there is substantial evidence that a copyright holder could bring a successful action under this section against the qualified carrier for infringement.

(v) Subsequent examination.—If the special master's report includes a statement that its examination indicated the existence of substantial evidence that a copyright holder could bring a successful action under this section against the qualified carrier for infringement, the special master shall, not later than 6 months after the report under clause (i) is filed, initiate another examination of the qualified carrier's compliance with the royalty payment and household eligibility requirements of the license under this section since the last report was filed under clause (iii). The special master shall file a report on the results of the examination conducted under this clause with the court referred to in paragraph (1) that issued the injunction, and the court shall transmit a copy to the Register of Copyrights, the Committees on the Judiciary and on Energy and Commerce of the House of Representatives, and the Committees on the Judiciary and on Commerce, Science, and Transportation of the Senate. The report shall include a statement described in clause (iv).

(vi) Compliance.—Upon motion filed by an aggrieved copyright owner, the court recognizing an entity as a qualified carrier shall terminate such designation upon finding that the entity has failed to cooperate with an examination required by this subparagraph.

(vii) Oversight.—During the period of time that the special master is conducting an examination under this subparagraph, the Comptroller General shall monitor the degree to which the entity seeking to be recognized or recognized as a qualified carrier under paragraph (3) is complying with the special master's examination. The qualified carrier shall make available to the Comptroller General all records and individuals that the Comptroller General considers necessary to meet the Comptroller General's obligations under this clause. The Comptroller General shall report the results of the monitoring required by this clause to the Committees on the Judiciary and on Energy and Commerce of the House of Representatives and the Committees on the Judiciary and

on Commerce, Science, and Transportation of the Senate at intervals of not less than six months during such period.

(C) Affirmation.—A qualified carrier shall file an affidavit with the district court and the Register of Copyrights 30 months after such status was granted stating that, to the best of the affiant's knowledge, it is in compliance with the requirements for a qualified carrier. The qualified carrier shall attach to its affidavit copies of all reports or orders issued by the court, the special master, and the Comptroller General.

(D) Compliance determination.—Upon the motion of an aggrieved television broadcast station, the court recognizing an entity as a qualified carrier may make a determination of whether the entity is providing local-into-local service to all DMAs.

(E) Pleading requirement.—In any motion brought under subparagraph (D), the party making such motion shall specify one or more designated market areas (as such term is defined in section 122(j)(2)(C)) for which the failure to provide service is being alleged, and, for each such designated market area, shall plead with particularity the circumstances of the alleged failure.

(F) Burden of proof.—In any proceeding to make a determination under subparagraph (D), and with respect to a designated market area for which failure to provide service is alleged, the entity recognized as a qualified carrier shall have the burden of proving that the entity provided local-into-local service with a good quality satellite signal to at least 90 percent of the households in such designated market area (based on the most recent census data released by the United States Census Bureau) at the time and place alleged.

(5) Failure to provide service.—

(A) Penalties.—If the court recognizing an entity as a qualified carrier finds that such entity has willfully failed to provide local-into-local service to all DMAs, such finding shall result in the loss of recognition of the entity as a qualified carrier and the termination of the waiver provided under paragraph (1), and the court may, in its discretion—

(i) treat such failure as an act of infringement under section 501, and subject such infringement to the remedies provided for in sections 502 through 506 and subsection (a)(6)(B) of this section; and

(ii) impose a fine of not less than $250,000 and not more than $5,000,000.

(B) Exception for nonwillful violation.—If the court determines that the failure to provide local-into-local service to all DMAs is nonwillful, the court may in its discretion impose financial penalties for noncompliance that reflect—

(i) the degree of control the entity had over the circumstances that resulted in the failure;

(ii) the quality of the entity's efforts to remedy the failure and restore service; and

(iii) the severity and duration of any service interruption.

(6) Penalties for violation of license.—A court that finds, under subsection (a)(6)(A), that an entity recognized as a qualified carrier has willfully made a secondary transmission of a primary transmission made by a network station and embodying a performance or display of a work to a subscriber who is not eligible to receive the transmission under this section shall reinstate the injunction waived under paragraph (1), and the court may order statutory damages of not more than $2,500,000.

(7) Local-into-local service to all dmas defined.—For purposes of this subsection:

(A) In general.—An entity provides "local-into-local service to all DMAs" if the entity provides local service in all designated market areas (as such term is defined in section 122(j)(2)(C)) pursuant to the license under section 122, except for designated market areas where the entity is temporarily or permanently unable to provide local service as a result of an act of god or other force majeure event beyond the control of the entity.

(B) Household coverage.—For purposes of subparagraph (A), an entity that makes available local-into-local service with a good quality satellite signal to at least 90 percent of the households in a designated market area based on the most recent census data released by the United States Census Bureau shall be considered to be providing local service to such designated market area.

(C) Good quality satellite signal defined.—The term "good quality satellite signal" has the meaning given such term under section 342(e)(2) of Communications Act of 1934.

§120 · Scope of exclusive rights in architectural works[63]

(a) Pictorial Representations Permitted.—The copyright in an architectural work that has been constructed does not include the right to prevent the making, distributing, or public display of pictures, paintings, photographs, or other pictorial representations of the work, if the building in which the work is embodied is located in or ordinarily visible from a public place.

(b) Alterations to and Destruction of Buildings.—Notwithstanding the provisions of section 106(2), the owners of a building embodying an architectural work may, without the consent of the author or copyright owner of the

architectural work, make or authorize the making of alterations to such building, and destroy or authorize the destruction of such building.

§ 121 · Limitations on exclusive rights: Reproduction for blind or other people with disabilities[64]

(a) Notwithstanding the provisions of section 106, it is not an infringement of copyright for an authorized entity to reproduce or to distribute in the United States copies or phonorecords of a previously published literary work or of a previously published musical work that has been fixed in the form of text or notation if such copies or phonorecords are reproduced or distributed in accessible formats exclusively for use by eligible persons.

(b)(1) Copies or phonorecords to which this section applies shall—

(A) not be reproduced or distributed in the United States in a format other than an accessible format exclusively for use by eligible persons;

(B) bear a notice that any further reproduction or distribution in a format other than an accessible format is an infringement; and

(C) include a copyright notice identifying the copyright owner and the date of the original publication.

(2) The provisions of this subsection shall not apply to standardized, secure, or norm-referenced tests and related testing material, or to computer programs, except the portions thereof that are in conventional human language (including descriptions of pictorial works) and displayed to users in the ordinary course of using the computer programs.

(c) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a publisher of print instructional materials for use in elementary or secondary schools to create and distribute to the National Instructional Materials Access Center copies of the electronic files described in sections 612(a)(23)(C), 613(a)(6), and section 674(e) of the Individuals with Disabilities Education Act that contain the contents of print instructional materials using the National Instructional Material Accessibility Standard (as defined in section 674(e)(3) of that Act), if—

(1) the inclusion of the contents of such print instructional materials is required by any State educational agency or local educational agency;

(2) the publisher had the right to publish such print instructional materials in print formats; and

(3) such copies are used solely for reproduction or distribution of the contents of such print instructional materials in accessible formats.

(d)For purposes of this section, the term—

(1) "accessible format" means an alternative manner or form that gives an eligible person access to the work when the copy or phonorecord in the

accessible format is used exclusively by the eligible person to permit him or her to have access as feasibly and comfortably as a person without such disability as described in paragraph (3);

(2) "authorized entity" means a nonprofit organization or a governmental agency that has a primary mission to provide specialized services relating to training, education, or adaptive reading or information access needs of blind or other persons with disabilities;

(3) "eligible person" means an individual who, regardless of any other disability—

(A) is blind;

(B) has a visual impairment or perceptual or reading disability that cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or

(C) is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading; and

(4) "print instructional materials" has the meaning given under section 674(e)(3)(C) of the Individuals with Disabilities Education Act.

§121A · Limitations on exclusive rights: reproduction for blind or other people with disabilities in Marrakesh Treaty countries[65]

(a) Notwithstanding the provisions of sections 106 and 602, it is not an infringement of copyright for an authorized entity, acting pursuant to this section, to export copies or phonorecords of a previously published literary work or of a previously published musical work that has been fixed in the form of text or notation in accessible formats to another country when the exportation is made either to—

(1) an authorized entity located in a country that is a Party to the Marrakesh Treaty; or

(2) an eligible person in a country that is a Party to the Marrakesh Treaty,

if prior to the exportation of such copies or phonorecords, the authorized entity engaged in the exportation did not know or have reasonable grounds to know that the copies or phonorecords would be used other than by eligible persons.

(b) Notwithstanding the provisions of sections 106 and 602, it is not an infringement of copyright for an authorized entity or an eligible person, or someone acting on behalf of an eligible person, acting pursuant to this section, to import copies or phonorecords of a previously published literary work or of

a previously published musical work that has been fixed in the form of text or notation in accessible formats.

(c) In conducting activities under subsection (a) or (b), an authorized entity shall establish and follow its own practices, in keeping with its particular circumstances, to—

(1) establish that the persons the authorized entity serves are eligible persons;

(2) limit to eligible persons and authorized entities the distribution of accessible format copies by the authorized entity;

(3) discourage the reproduction and distribution of unauthorized copies;

(4) maintain due care in, and records of, the handling of copies of works by the authorized entity, while respecting the privacy of eligible persons on an equal basis with others; and

(5) facilitate effective cross-border exchange of accessible format copies by making publicly available—

(A) the titles of works for which the authorized entity has accessible format copies or phonorecords and the specific accessible formats in which they are available; and

(B) information on the policies, practices, and authorized entity partners of the authorized entity for the cross-border exchange of accessible format copies.

(d) Nothing in this section shall be construed to establish—

(1) a cause of action under this title; or

(2) a basis for regulation by any Federal agency.

(e) Nothing in this section shall be construed to limit the ability to engage in any activity otherwise permitted under this title.

(f) For purposes of this section—

(1) the terms "accessible format", "authorized entity", and "eligible person" have the meanings given those terms in section 121; and

(2) the term "Marrakesh Treaty" means the Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities concluded at Marrakesh, Morocco, on June 28, 2013.

§ 122 · Limitations on exclusive rights: Secondary transmissions of local television programming by satellite[66]

(a) Secondary Transmissions into Local Markets.—

(1) Secondary transmissions of television broadcast stations within a local market.—A secondary transmission of a performance or display of a work embodied in a primary transmission of a television broadcast

station into the station's local market shall be subject to statutory licensing under this section if—

(A) the secondary transmission is made by a satellite carrier to the public;

(B) with regard to secondary transmissions, the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals; and

(C) the satellite carrier makes a direct or indirect charge for the secondary transmission to—

(i) each subscriber receiving the secondary transmission; or

(ii) a distributor that has contracted with the satellite carrier for direct or indirect delivery of the secondary transmission to the public.

(2) Significantly viewed stations.—

(A) In general.—A secondary transmission of a performance or display of a work embodied in a primary transmission of a television broadcast station to subscribers who receive secondary transmissions of primary transmissions under paragraph (1) shall be subject to statutory licensing under this paragraph if the secondary transmission is of the primary transmission of a network station or a nonnetwork station to a subscriber who resides outside the station's local market but within a community in which the signal has been determined by the Federal Communications Commission to be significantly viewed in such community, pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976, applicable to determining with respect to a cable system whether signals are significantly viewed in a community.

(B) Waiver.—A subscriber who is denied the secondary transmission of the primary transmission of a network station or a non-network station under subparagraph (A) may request a waiver from such denial by submitting a request, through the subscriber's satellite carrier, to the network station or non-network station in the local market affiliated with the same network or non-network where the subscriber is located. The network station or non-network station shall accept or reject the subscriber's request for a waiver within 30 days after receipt of the request. If the network station or non-network station fails to accept or reject the subscriber's request for a waiver within that 30-day period, that network station or non-network station shall be deemed to agree to the waiver request.

(3) Secondary transmission of low power programming.—

(A) In general.—Subject to subparagraphs (B) and (C), a secondary transmission of a performance or display of a work embodied in a primary transmission of a television broadcast station to subscribers who receive secondary transmissions of primary transmissions under paragraph (1) shall be subject to statutory licensing under this paragraph if the secondary

transmission is of the primary transmission of a television broadcast station that is licensed as a low power television station, to a subscriber who resides within the same designated market area as the station that originates the transmission.

(B) No applicability to repeaters and translators.—Secondary transmissions provided for in subparagraph (A) shall not apply to any low power television station that retransmits the programs and signals of another television station for more than 2 hours each day.

(C) No impact on other secondary transmissions obligations.—A satellite carrier that makes secondary transmissions of a primary transmission of a low power television station under a statutory license provided under this section is not required, by reason of such secondary transmissions, to make any other secondary transmissions.

(4) Special exceptions.—A secondary transmission of a performance or display of a work embodied in a primary transmission of a television broadcast station to subscribers who receive secondary transmissions of primary transmissions under paragraph (1) shall, if the secondary transmission is made by a satellite carrier that complies with the requirements of paragraph (1), be subject to statutory licensing under this paragraph as follows:

(A) States with single full-power network station.—In a State in which there is licensed by the Federal Communications Commission a single full-power station that was a network station on January 1, 1995, the statutory license provided for in this paragraph shall apply to the secondary transmission by a satellite carrier of the primary transmission of that station to any subscriber in a community that is located within that State and that is not within the first 50 television markets as listed in the regulations of the Commission as in effect on such date (47 C.F.R. 76.51).

(B) States with all network stations and non-network stations in same local market.—In a State in which all network stations and non-network stations licensed by the Federal Communications Commission within that State as of January 1, 1995, are assigned to the same local market and that local market does not encompass all counties of that State, the statutory license provided under this paragraph shall apply to the secondary transmission by a satellite carrier of the primary transmissions of such station to all subscribers in the State who reside in a local market that is within the first 50 major television markets as listed in the regulations of the Commission as in effect on such date (section 76.51 of title 47, Code of Federal Regulations).

(C) Additional stations.—In the case of that State in which are located 4 counties that—

(i) on January 1, 2004, were in local markets principally comprised of counties in another State, and

(ii) had a combined total of 41,340 television households, according to the U.S. Television Household Estimates by Nielsen Media Research for 2004,

the statutory license provided under this paragraph shall apply to secondary transmissions by a satellite carrier to subscribers in any such county of the primary transmissions of any network station located in that State, if the satellite carrier was making such secondary transmissions to any subscribers in that county on January 1, 2004.

(D) Certain additional stations. — If 2 adjacent counties in a single State are in a local market comprised principally of counties located in another State, the statutory license provided for in this paragraph shall apply to the secondary transmission by a satellite carrier to subscribers in those 2 counties of the primary transmissions of any network station located in the capital of the State in which such 2 counties are located, if—

(i) the 2 counties are located in a local market that is in the top 100 markets for the year 2003 according to Nielsen Media Research; and

(ii) the total number of television households in the 2 counties combined did not exceed 10,000 for the year 2003 according to Nielsen Media Research.

(E) Networks of noncommercial educational broadcast stations. — In the case of a system of three or more noncommercial educational broadcast stations licensed to a single State, public agency, or political, educational, or special purpose subdivision of a State, the statutory license provided for in this paragraph shall apply to the secondary transmission of the primary transmission of such system to any subscriber in any county or county equivalent within such State, if such subscriber is located in a designated market area that is not otherwise eligible to receive the secondary transmission of the primary transmission of a noncommercial educational broadcast station located within the State pursuant to paragraph (1).

(5) Applicability of royalty rates and procedures. — The royalty rates and procedures under section 119(b) shall apply to the secondary transmissions to which the statutory license under paragraph (4) applies.

(b) Reporting Requirements. —

(1) Initial lists. — A satellite carrier that makes secondary transmissions of a primary transmission made by a network station under subsection (a) shall, within 90 days after commencing such secondary transmissions, submit to the network that owns or is affiliated with the network station—

(A) a list identifying (by name in alphabetical order and street address, including county and 9-digit zip code) all subscribers to which the satellite carrier makes secondary transmissions of that primary transmission under subsection (a);

(B) a separate list, aggregated by designated market area (by name and address, including street or rural route number, city, State, and 9-digit zip code), which shall indicate those subscribers being served pursuant to paragraph (2) of subsection (a).

(2) Subsequent lists.—After the list is submitted under paragraph (1), the satellite carrier shall, on the 15th of each month, submit to the network—

(A) a list identifying (by name in alphabetical order and street address, including county and 9-digit zip code) any subscribers who have been added or dropped as subscribers since the last submission under this subsection; and

(B) a separate list, aggregated by designated market area (by name and street address, including street or rural route number, city, State, and 9-digit zip code), identifying those subscribers whose service pursuant to paragraph (2) of subsection (a) has been added or dropped since the last submission under this subsection.

(3) Use of subscriber information.—Subscriber information submitted by a satellite carrier under this subsection may be used only for the purposes of monitoring compliance by the satellite carrier with this section.

(4) Requirements of networks.—The submission requirements of this subsection shall apply to a satellite carrier only if the network to which the submissions are to be made places on file with the Register of Copyrights a document identifying the name and address of the person to whom such submissions are to be made. The Register of Copyrights shall maintain for public inspection a file of all such documents.

(c) No Royalty Fee Required for Certain Secondary Transmissions.—A satellite carrier whose secondary transmissions are subject to statutory licensing under paragraphs (1), (2), and (3) of subsection (a) shall have no royalty obligation for such secondary transmissions.

(d) Noncompliance with Reporting and Regulatory Requirements.—Notwithstanding subsection (a), the willful or repeated secondary transmission to the public by a satellite carrier into the local market of a television broadcast station of a primary transmission embodying a performance or display of a work made by that television broadcast station is actionable as an act of infringement under section 501, and is fully subject to the remedies provided under sections 502 through 506, if the satellite carrier has not complied with the reporting requirements of subsection (b) or with the rules, regulations, and authorizations of the Federal Communications Commission concerning the carriage of television broadcast signals.

(e) Willful Alterations.—Notwithstanding subsection (a), the secondary transmission to the public by a satellite carrier into the local market of a television broadcast station of a performance or display of a work embodied in a primary transmission made by that television broadcast station is actionable as an act of

infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and section 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcement transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal.

(f) Violation of Territorial Restrictions on Statutory License for Television Broadcast Stations.—

(1) Individual violations.—The willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission embodying a performance or display of a work made by a television broadcast station to a subscriber who does not reside in that station's local market, and is not subject to statutory licensing under section 119, subject to statutory licensing by reason of paragraph (2)(A), (3), or (4) of subsection (a), or subject to a private licensing agreement, is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506 and 509, except that—

(A) no damages shall be awarded for such act of infringement if the satellite carrier took corrective action by promptly withdrawing service from the ineligible subscriber; and

(B) any statutory damages shall not exceed $250 for such subscriber for each month during which the violation occurred.

(2) Pattern of violations.—If a satellite carrier engages in a willful or repeated pattern or practice of secondarily transmitting to the public a primary transmission embodying a performance or display of a work made by a television broadcast station to subscribers who do not reside in that station's local market, and are not subject to statutory licensing under section 119, subject to statutory licensing by reason of paragraph (2)(A), (3), or (4) of subsection (a), or subject to a private licensing agreement, then in addition to the remedies under paragraph (1)—

(A) if the pattern or practice has been carried out on a substantially nationwide basis, the court—

(i) shall order a permanent injunction barring the secondary transmission by the satellite carrier of the primary transmissions of that television broadcast station (and if such television broadcast station is a network station, all other television broadcast stations affiliated with such network); and

(ii) may order statutory damages not exceeding $2,500,000 for each 6-month period during which the pattern or practice was carried out; and

(B) if the pattern or practice has been carried out on a local or regional basis with respect to more than one television broadcast station, the court—

(i) shall order a permanent injunction barring the secondary transmission in that locality or region by the satellite carrier of the primary transmissions of any television broadcast station; and

(ii) may order statutory damages not exceeding $2,500,000 for each 6-month period during which the pattern or practice was carried out.

(g) Burden of Proof.—In any action brought under subsection (f), the satellite carrier shall have the burden of proving that its secondary transmission of a primary transmission by a television broadcast station is made only to subscribers located within that station's local market or subscribers being served in compliance with section 119, paragraph (2)(A), (3), or (4) of subsection (a), or a private licensing agreement.

(h) Geographic Limitations on Secondary Transmissions.—The statutory license created by this section shall apply to secondary transmissions to locations in the United States.

(i) Exclusivity with Respect to Secondary Transmissions of Broadcast Stations by Satellite to Members of the Public.—No provision of section 111 or any other law (other than this section and section 119) shall be construed to contain any authorization, exemption, or license through which secondary transmissions by satellite carriers of programming contained in a primary transmission made by a television broadcast station may be made without obtaining the consent of the copyright owner.

(j) Definitions.—In this section—

(1) Distributor.—The term "distributor" means an entity that contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers or indirectly through other program distribution entities.

(2) Local market.—

(A) In general.—The term "local market", in the case of both commercial and noncommercial television broadcast stations, means the designated market area in which a station is located, and—

(i) in the case of a commercial television broadcast station, all commercial television broadcast stations licensed to a community within the same designated market area are within the same local market; and

(ii) in the case of a noncommercial educational television broadcast station, the market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station.

(B) County of license.—In addition to the area described in subparagraph (A), a station's local market includes the county in which the station's community of license is located.

(C) Designated market area.—For purposes of subparagraph (A), the term "designated market area" means a designated market area, as determined by Nielsen Media Research and published in the 1999–2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates or any successor publication.

(D) Certain areas outside of any designated market area.—Any census area, borough, or other area in the State of Alaska that is outside of a designated market area, as determined by Nielsen Media Research, shall be deemed to be part of one of the local markets in the State of Alaska. A satellite carrier may determine which local market in the State of Alaska will be deemed to be the relevant local market in connection with each subscriber in such census area, borough, or other area.

(E) Market determinations.—The local market of a commercial television broadcast station may be modified by the Federal Communications Commission in accordance with section 338(l) of the Communications Act of 1934 (47 U.S.C. 338).

(3) Low power television station.—The term "low power television station" means a low power TV station as defined in section 74.701(f) of title 47, Code of Federal Regulations, as in effect on June 1, 2004. For purposes of this paragraph, the term "low power television station" includes a low power television station that has been accorded primary status as a Class A television licensee under section 73.6001(a) of title 47, Code of Federal Regulations.

(4) Network station; non-network station; satellite carrier; secondary transmission.—The terms "network station", "non-network station", "satellite carrier", and "secondary transmission" have the meanings given such terms under section 119(d).

(5) Noncommercial educational broadcast station.—The term "noncommercial educational broadcast station" means a television broadcast station that is a noncommercial educational broadcast station as defined in section 397 of the Communications Act of 1934, as in effect on the date of the enactment of the Satellite Television Extension and Localism Act of 2010.

(6) Subscriber.—The term "subscriber" means a person or entity that receives a secondary transmission service from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

(7) Television broadcast station.—The term "television broadcast station"—

(A) means an over-the-air, commercial or noncommercial television broadcast station licensed by the Federal Communications Commission under subpart E of part 73 of title 47, Code of Federal Regulations, except that such term does not include a low-power or translator television station; and

(B) includes a television broadcast station licensed by an appropriate governmental authority of Canada or Mexico if the station broadcasts primarily in the English language and is a network station as defined in section 119(d)(2)(A).

Chapter 1 · Notes

1. In 1980, section 117 was amended in its entirety and given a new title. However, the table of sections was not changed to reflect the new title. Pub. L. No. 96-517, 94 Stat. 3015, 3028. In 1997, a technical amendment made that change. Pub. L. No. 105-80, 111 Stat. 1529, 1534.

The Satellite Television Extension and Localism Act of 2010 Act amended the title for section 111 by adding "of broadcast programming by cable." Pub. L. No. 111-175, 124 Stat. 1218, 1231. It amended the title for section 119 by substituting "distant television programming by satellite" for "superstations and network stations for private home viewing." *Id.*, 124 Stat. 1219. The Act also amended the title for section 122 by deleting "by satellite carriers within local markets" from the title and inserting "of local television programming by satellite." *Id.*, 124 Stat. 1227.

2. The Audio Home Recording Act of 1992 amended section 101 by inserting "Except as otherwise provided in this title," at the beginning of the first sentence. Pub. L. No. 102-563, 106 Stat. 4237, 4248.

The Berne Convention Implementation Act of 1988 amended section 101 by adding a definition for "Berne Convention work." Pub. L. No. 100-568, 102 Stat. 2853, 2854. In 1990, the Architectural Works Copyright Protection Act amended the definition of "Berne Convention work" by adding paragraph (5). Pub. L. No. 101-650, 104 Stat. 5089, 5133. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 deleted the definition of "Berne Convention work" from section 101. Pub. L. No. 105-304, 112 Stat. 2860, 2861. The definition of "Berne Convention work," as deleted, is contained in Appendix P.

3. In 1990, the Architectural Works Copyright Protection Act amended section 101 by adding the definition for "architectural work." Pub. L. No. 101-650, 104 Stat. 5089, 5133. That Act states that the definition is applicable to "any architectural work that, on the date of the enactment of this Act, is unconstructed and embodied in unpublished plans or drawings, except that protection for such architectural work under Title 17, *United States Code*, by virtue of the amendments made by this title, shall terminate on December 31, 2002, unless the work is constructed by that date."

4. The Berne Convention Implementation Act of 1988 amended section 101 by adding the definition of "Berne Convention." Pub. L. No. 100-568, 102 Stat. 2853, 2854.

5. In 1980, the definition of "computer program" was added to section 101 and placed at the end. Pub. L. No. 96-517, 94 Stat. 3015, 3028. The Intellectual Property and High Technology Technical Amendments Act of 2002 amended section 101 by moving the definition for computer program from the end of section 101 to be in alphabetical order, after "compilation." Pub. L. No. 107-273, 116 Stat. 1758, 1909.

6. The Copyright Royalty and Distribution Reform Act of 2004 amended section 101 by adding the definition for "Copyright Royalty Judge." That Act inserted the definition in the

wrong alphabetical order, placing it after "copies," instead of "copyright owner." Pub. L. No. 108-419, 118 Stat. 2341, 2361. A technical correction in the Copyright Cleanup, Clarification, and Corrections Act of 2010 put it after the definition for copyright owner. Pub. L. No. 111-295, 124 Stat. 3180, 3181.

7. The Digital Performance Right in Sound Recordings Act of 1995 amended section 101 by adding the definition of "digital transmission." Pub. L. No.104-39, 109 Stat. 336, 348.

8. The Fairness in Music Licensing Act of 1998 amended section 101 by adding the definition of "establishment." Pub. L. No. 105-298, 112 Stat. 2827, 2833.

9. In 1997, the No Electronic Theft (NET) Act amended section 101 by adding the definition for "financial gain." Pub. L. No. 105-147, 111 Stat. 2678.

10. The Fairness in Music Licensing Act of 1998 amended section 101 by adding the definition for "food service or drinking establishment." It inserted the definition in the wrong alphabetical order, placing it after "establishment" instead of "fixed." Pub. L. No. 105-298, 112 Stat. 2827, 2833. A technical correction in the Copyright Cleanup, Clarification, and Corrections Act of 2010 placed it after the definition for fixed. Pub. L. No. 111-295, 124 Stat. 3180, 3181.

11. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 amended section 101 by adding the definition of "Geneva Phonograms Convention." Pub. L. No. 105-304, 112 Stat. 2860, 2861.

12. The Fairness in Music Licensing Act of 1998 amended section 101 by adding the definition of "gross square feet of space." Pub. L. No. 105-298, 112 Stat. 2827, 2833.

13. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 requires that paragraph (5) of the definition of "international agreement" take effect upon entry into force of the WIPO Copyright Treaty with respect to the United States, which occurred March 6, 2002. Pub. L. No. 105-304, 112 Stat. 2860, 2877.

14. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 requires that paragraph (6) of the definition of "international agreement" take effect upon entry into force of the WIPO Performances and Phonograms Treaty with respect to the United States, which occurred May 20, 2002. Pub. L. No. 105-304, 112 Stat. 2860, 2877.

15. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 amended section 101 by adding the definition of "international agreement." Pub. L. No. 105-304, 112 Stat. 2860, 2861.

16. The Artists' Rights and Theft Prevention Act of 2005 amended section 101 by adding the definition for "motion picture exhibition facility." That Act inserted the definition in the wrong alphabetical order, placing it after "motion pictures," instead of before. Pub. L. No. 109-9, 119 Stat. 218, 220. A technical correction in the Copyright Cleanup, Clarification, and Corrections Act of 2010 put it after the definition for "literary works." Pub. L. No. 111-295, 124 Stat. 3180, 3181.

17. The Fairness in Music Licensing Act of 1998 amended section 101 by adding the definition of "performing rights society." Pub. L. No. 105-298, 112 Stat. 2827, 2833.

18. The Berne Convention Implementation Act of 1988 amended the definition of "pictorial, graphic, and sculptural works" by inserting "diagrams, models, and technical drawings, including architectural plans" in the first sentence, in lieu of "technical drawings, diagrams, and models." Pub. L. No. 100-568, 102 Stat. 2853, 2854.

19. The Fairness in Music Licensing Act of 1998 amended section 101 by adding the definition of "proprietor." Pub. L. No. 105-298, 112 Stat. 2827, 2833. In 1999, a technical amendment added the phrase "For purposes of section 513," to the beginning of the definition of "proprietor." Pub. L. No. 106-44, 113 Stat. 221, 222.

20. The Copyright Renewal Act of 1992 amended section 101 by adding the definition of "registration." Pub. L. No. 102-307, 106 Stat. 264, 266.

21. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 amended section 101 by adding the definition of "treaty party." Pub. L. No. 105-304, 112 Stat. 2860, 2861.

22. The Berne Convention Implementation Act of 1988 amended section 101 by adding the definition of "country of origin" of a Berne Convention work, for purposes of section 411. Pub. L. No. 100-568, 102 Stat. 2853, 2854. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 amended that definition by changing it to a definition for "United States work," for purposes of section 411. Pub. L. No. 105-304, 112 Stat. 2860, 2861. In 1999, a technical amendment moved the definition of "United States work" to place it in alphabetical order, after the definition for "United States." Pub. L. No. 106-44, 113 Stat. 221, 222.

23. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 amended section 101 by adding the definition of "WIPO Copyright Treaty." Pub. L. No. 105-304, 112 Stat. 2860, 2861. That definition is required to take effect upon entry into force of the WIPO Copyright Treaty with respect to the United States, which occurred March 6, 2002. Pub. L. No. 105-304, 112 Stat. 2860, 2877.

24. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 amended section 101 by adding the definition of "WIPO Performances and Phonograms Treaty." Pub. L. No. 105-304, 112 Stat. 2860, 2862. That definition is required to take effect upon entry into force of the WIPO Performances and Phonograms Treaty with respect to the United States, which occurred May 20, 2002. Pub. L. No. 105-304, 112 Stat. 2860, 2877.

25. The Visual Artists Rights Act of 1990 amended section 101 by adding the definition of "work of visual art." Pub. L. No. 101-650, 104 Stat. 5089, 5128.

26. The Satellite Home Viewer Improvement Act of 1999 amended the definition of "a work made for hire" by inserting "as a sound recording" after "audiovisual work." Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-544. The Work Made for Hire and Copyright Corrections Act of 2000 amended the definition of "work made for hire" by deleting "as a sound recording" after "audiovisual work." Pub. L. No. 106-379, 114 Stat. 1444. The Act also added a second paragraph to part (2) of that definition. *Id*. These changes are effective retroactively, as of November 29, 1999.

27. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 amended section 101 by adding the definitions of "WTO Agreement" and "WTO member country," thereby transferring those definitions to section 101 from section 104A. Pub. L. No. 105-304, 112 Stat. 2860, 2862. See also note 31, *infra*.

28. In 1990, the Architectural Works Copyright Protection Act amended subsection 102(a) by adding at the end thereof paragraph (8). Pub. L. No. 101-650, 104 Stat. 5089, 5133.

29. The Berne Convention Implementation Act of 1988 amended section 104(b) by redesignating paragraph (4) as paragraph (5), by inserting after paragraph (3) a new paragraph (4), and by adding subsection (c) at the end. Pub. L. No. 100-568, 102 Stat. 2853, 2855. The

WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 amended section 104 as follows: 1) by amending subsection (b) to redesignate paragraphs (3) and (5) as (5) and (6), respectively, and by adding a new paragraph (3); 2) by amending section 104(b), throughout; and 3) by adding section 104(d). Pub. L. No. 105-304, 112 Stat. 2860, 2862.

30. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 requires that subsection (d), regarding the effect of phonograms treaties, take effect upon entry into force of the WIPO Performances and Phonograms Treaty with respect to the United States, which occurred May 20, 2002. Pub. L. No. 105-304, 112 Stat. 2860, 2877.

31. In 1993, the North American Free Trade Agreement Implementation Act added section 104A. Pub. L. No. 103-182, 107 Stat. 2057, 2115. In 1994, the Uruguay Round Agreements Act amended section 104A in its entirety with an amendment in the nature of a substitute. Pub. L. No. 103-465, 108 Stat. 4809, 4976. On November 13, 1997, section 104A was amended by replacing subsection (d)(3)(A), by striking the last sentence of subsection (e)(1)(B)(ii), and by rewriting paragraphs (2) and (3) of subsection (h). Pub. L. No. 105-80, 111 Stat. 1529, 1530. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 amended section 104A by rewriting paragraphs (1) and (3) of subsection (h); by adding subparagraph (E) to subsection (h)(6); and by amending subsection (h)(8)(B)(i). Pub. L. No. 105-304, 112 Stat. 2860, 2862. That Act also deleted paragraph (9), thereby transferring the definitions for "WTO Agreement" and "WTO member country" from section 104A to section 101. Pub. L. No. 105-304, 112 Stat. 2860, 2863. See also note 27, *supra*.

32. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 requires that subparagraph (C) of the definition of "date of adherence or proclamation" take effect upon entry into force of the WIPO Copyright Treaty with respect to the United States, which occurred March 6, 2002. Pub. L. No. 105-304, 112 Stat. 2860, 2877.

33. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 requires that subparagraph (D) of the definition of "date of adherence or proclamation" take effect upon entry into force of the WIPO Performances and Phonograms Treaty with respect to the United States, which occurred May 20, 2002. Pub. L. No. 105-304, 112 Stat. 2860, 2877.

34. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 requires that subparagraph (C) of the definition of "eligible country" take effect upon entry into force of the WIPO Copyright Treaty with respect to the United States, which occurred March 6, 2002. Pub. L. No. 105-304, 112 Stat. 2860, 2877.

35. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 requires that subparagraph (D) of the definition of "eligible country" take effect upon entry into force of the WIPO Performance and Phonograms Treaty with respect to the United States, which occurred May 20, 2002. Pub. L. No. 105-304, 112 Stat. 2860, 2877.

36. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 requires that subparagraph (E) of the definition of "restored work" take effect upon entry into force of the WIPO Performances and Phonograms Treaty with respect to the United States, which occurred May 20, 2002. Pub. L. No. 105-304, 112 Stat. 2860, 2877.

37. In 1968, the Standard Reference Data Act provided an exception to section 105, Pub. L. No. 90-396, 82 Stat. 339. Section 6 of that act amended Title 15 of the *United States Code* by authorizing the Secretary of Commerce, at 15 U.S.C. 290e, to secure copyright and

renewal thereof on behalf of the United States as author or proprietor "in all or any part of any standard reference data which he prepares or makes available under this chapter," and to "authorize the reproduction and publication thereof by others." See also section 105(f) of the Transitional and Supplementary Provisions of the Copyright Act of 1976, in Appendix A. Pub. L. No. 94-553, 90 Stat. 2541.

Concerning the liability of the United States Government for copyright infringement, also see 28 *U.S.C.* 1498. Title 28 of the *United States Code* is entitled "Judiciary and Judicial Procedure," included in the appendices to this volume.

In 2019, the National Defense Authorization Act of Fiscal Year 2020 amended section 105 by adding "(a) In general.—" before "Copyright"; and by adding new subsections (b), (c), and (c). Pub. L. No. 116-92, 133 Stat. 1198.

38. When the National Defense Authorization Act of Fiscal Year 2020 added three new subsections to section 105, it designated them (b), (c), and (c). But for this typographical error, the third new subsection would have been designated as (d).

39. The Digital Performance Right in Sound Recordings Act of 1995 amended section 106 by adding paragraph (6). Pub. L. No. 104-39, 109 Stat. 336. In 1999, a technical amendment substituted "121" for "120." Pub. L. No. 106-44, 113 Stat. 221, 222. The Intellectual Property and High Technology Technical Amendments Act of 2002 amended section 106 by substituting sections "107 through 122" for "107 through 121." Pub. L. No. 107-273, 116 Stat. 1758, 1909.

40. The Visual Artists Rights Act of 1990 added section 106A. Pub. L. No. 101-650, 104 Stat. 5089, 5128. The Act states that, generally, section 106A is to take effect 6 months after its date of enactment, December 1, 1990, and that the rights created by section 106A shall apply to (1) works created before such effective date but title to which has not, as of such effective date, been transferred from the author and (2) works created on or after such effective date, but shall not apply to any destruction, distortion, mutilation, or other modification (as described in section 106A(a)(3)) of any work which occurred before such effective date. See also, note 3, chapter 3.

41. The Visual Artists Rights Act of 1990 amended section 107 by adding the reference to section 106A. Pub. L. No. 101-650, 104 Stat. 5089, 5132. In 1992, section 107 was also amended to add the last sentence. Pub. L. No. 102-492, 106 Stat. 3145.

42. The Copyright Amendments Act of 1992 amended section 108 by repealing subsection (i) in its entirety. Pub. L. No. 102-307, 106 Stat. 264, 272. In 1998, the Sonny Bono Copyright Term Extension Act amended section 108 by redesignating subsection (h) as (i) and adding a new subsection (h). Pub. L. No. 105-298, 112 Stat. 2827, 2829. Also in 1998, the Digital Millennium Copyright Act amended section 108 by making changes in subsections (a), (b), and (c). Pub. L. No. 105-304, 112 Stat. 2860, 2889.

In 2005, the Preservation of Orphan Works Act amended subsection 108(i) by adding a reference to subsection (h). It substituted "(b), (c), and (h)" for "(b) and (c)." Pub. L. No. 109-9, 119 Stat. 218, 226, 227.

43. The Record Rental Amendment of 1984 amended section 109 by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and by inserting a new subsection (b) after subsection (a). Pub. L. No. 98-450, 98 Stat. 1727. Section 4(b) of the Act states that the provisions of section 109(b), as added by section 2 of the Act, "shall not affect the right of an owner of a particular phonorecord of a sound recording, who acquired such ownership before [October 4, 1984], to dispose of the possession of that particular phonorecord on or

after such date of enactment in any manner permitted by section 109 of title 17, *United States Code*, as in effect on the day before the date of the enactment of this Act." Pub. L. No. 98-450, 98 Stat. 1727, 1728. Section 4(c) of the Act also states that the amendments "shall not apply to rentals, leasings, lendings (or acts or practices in the nature of rentals, leasings, or lendings) occurring after the date which is 13 years after [October 4, 1984]." In 1988, the Record Rental Amendment Act of 1984 was amended to extend the time period in section 4(c) from 5 years to 13 years. Pub. L. No. 100-617, 102 Stat. 3194. In 1993, the North American Free Trade Agreement Implementation Act repealed section 4(c) of the Record Rental Amendment of 1984. Pub. L. No. 103-182, 107 Stat. 2057, 2114. Also in 1988, technical amendments to section 109(d) inserted "(c)" in lieu of "(b)" and substituted "copyright" in lieu of "coyright." Pub. L. No. 100-617, 102 Stat. 3194.

The Computer Software Rental Amendments Act of 1990 amended section 109(b) as follows: 1) paragraphs (2) and (3) were redesignated as paragraphs (3) and (4), respectively; 2) paragraph (1) was struck out and new paragraphs (1) and (2) were inserted in lieu thereof; and 3) paragraph (4), as redesignated, was amended in its entirety with a new paragraph (4) inserted in lieu thereof. Pub. L. No. 101-650, 104 Stat. 5089, 5134. The Act states that section 109(b), as amended, "shall not affect the right of a person in possession of a particular copy of a computer program, who acquired such copy before the date of the enactment of this Act, to dispose of the possession of that copy on or after such date of enactment in any manner permitted by section 109 of title 17, *United States Code*, as in effect on the day before such date of enactment." The Act also states that the amendments made to section 109(b) "shall not apply to rentals, leasings, or lendings (or acts or practices in the nature of rentals, leasings, or lendings) occurring on or after October 1, 1997." However, this limitation, which is set forth in the first sentence of section 804 (c) of the Computer Software Rental Amendments Act of 1990, at 104 Stat. 5136, was subsequently deleted in 1994 by the Uruguay Round Agreements Act. Pub. L. No. 103-465, 108 Stat. 4809, 4974.

The Computer Software Rental Amendments Act of 1990 also amended section 109 by adding at the end thereof subsection (e). Pub. L. No. 101-650, 104 Stat. 5089, 5135. That Act states that the provisions contained in the new subsection (e) shall take effect 1 year after its date of enactment. It was enacted on December 1, 1990. The Act also states that such amendments so made "shall not apply to public performances or displays that occur on or after October 1, 1995."

In 1994, the Uruguay Round Agreements Act amended section 109(a) by adding the second sentence, which begins with "Notwithstanding the preceding sentence." Pub. L. No. 103-465, 108 Stat. 4809, 4981.

The Prioritizing Resources and Organization for Intellectual Property Act of 2008 amended part (4) of subsection 109(b) by removing the reference to section 509 (which was repealed). Pub. L. No. 110-403, 122 Stat. 4256, 4264.

44. In 1988, the Extension of Record Rental Amendment amended section 110 by adding paragraph (10). Pub. L. No. 97-366, 96 Stat. 1759. In 1997, the Technical Corrections to the Satellite Home Viewer Act amended section 110 by inserting a semicolon in lieu of the period at the end of paragraph (8); by inserting "; and" in lieu of the period at the end of paragraph (9); and by inserting "(4)" in lieu of "4 above" in paragraph (10). Pub. L. No. 105-80, 111 Stat. 1529, 1534. The Fairness in Music Licensing Act of 1998 amended section 110, in paragraph 5, by adding subparagraph (B) and by making conforming amendments to subparagraph (A);

by adding the phrase "or of the audiovisual or other devices utilized in such performance" to paragraph 7; and by adding the last paragraph to section 110 that begins "The exemptions provided under paragraph (5)." Pub. L. No. 105-298, 112 Stat. 2827, 2830. In 1999, a technical amendment made corrections to conform paragraph designations that were affected by amendments previously made by the Fairness in Music Licensing Act of 1998. Pub. L. No. 106-44, 113 Stat. 221. The Technology, Education, and Copyright Harmonization Act of 2002 amended section 110 by substituting new language for paragraph 110(2) and by adding all the language at the end of section 110 that concerns paragraph 110(2). Pub. L. No. 107-273, 116 Stat. 1758, 1910.

The Family Movie Act of 2005 amended section 110 by adding paragraph (11) and by adding a new paragraph at the end of that section. Pub. L. No. 109-9, 119 Stat. 218, 223.

45. Throughout section 111 the date of enactment of the Satellite Television and Localism Act of 2010 (STELA) is incorporated by reference. STELA was enacted on May 27, 2010. Pub. L. No. 111-175, 124 Stat. 1218. There are also references to the date of enactment for the Copyright Act of 1976, which is October 19, 1976. Pub. L. No. 94-553, 90 Stat. 2541.

In 1986, section 111(d) was amended by striking out paragraph (1) and by redesignating paragraphs (2), (3), (4), and (5) as paragraphs (1), (2), (3), and (4), respectively. Pub. L. 99-397, 100 Stat. 848. Also, in 1986, section 111(f) was amended by substituting "subsection (d)(1)" for "subsection (d)(2)" in the last sentence of the definition of "secondary transmission" and by adding a new sentence after the first sentence in the definition of "local service area of a primary transmitter." Pub. L. No. 99-397, 100 Stat. 848.

The Satellite Home Viewer Act of 1988 amended subsection 111(a) by striking "or" at the end of paragraph (3), by redesignating paragraph (4) as paragraph (5), and by inserting a new paragraph (4). Pub. L. No. 100-667, 102 Stat. 3935, 3949. That Act also amended section (d)(1)(A) by adding the second sentence, which begins with "In determining the total number." *Id.*

The Copyright Royalty Tribunal Reform Act of 1993 amended section 111(d) by substituting "Librarian of Congress" for "Copyright Royalty Tribunal" where appropriate, by inserting a new sentence in lieu of the second and third sentences of paragraph (2), and, in paragraph (4), by amending subparagraph (B) in its entirety. Pub. L. No. 103-198, 107 Stat. 2304, 2311.

The Satellite Home Viewer Act of 1994 amended section 111(f) by inserting "microwave" after "wires, cables," in the paragraph relating to the definition of "cable system" and by inserting new matter after "April 15, 1976," in the paragraph relating to the definition of "local service area of a primary transmitter." Pub. L. No. 103-369, 108 Stat. 3477, 3480. That Act provides that the amendment "relating to the definition of the local service area of a primary transmitter, shall take effect on July 1, 1994." *Id.*

In 1995, the Digital Performance in Sound Recordings Act amended section 111(c)(1) by inserting "and section 114(d)" in the first sentence, after "of this subsection." Pub. L. No. 104-39, 109 Stat. 336, 348.

The Satellite Home Viewer Improvement Act of 1999 amended section 111 by substituting "statutory" for "compulsory" and "programming" for "programing," wherever they appeared. Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-543. The Act also amended sections 111(a) and (b) by inserting "performance or display of a work embodied in a primary transmission" in lieu of "primary transmission embodying a performance or display of a work." It amended paragraph (1) of section 111(c) by inserting "a performance or display of a work embodied in" after "by a cable system of" and by striking "and embodying a performance

or display of a work." It amended subparagraphs (3) and (4) of section 111(a) by inserting "a performance or display of a work embodied in a primary transmission" in lieu of "a primary transmission" and by striking "and embodying a performance or display of a work." *Id.*

The Copyright Royalty and Distribution Reform Act of 2004 made amendments to subsection 111(d) to conform it to revised chapter 8, substituting "Copyright Royalty Judges" for "Librarian of Congress" where appropriate, along with making other conforming amendments. Pub. L. No. 108-419, 118 Stat. 2341, 2361. The Satellite Home Viewer Extension and Reauthorization Act of 2004 amended section 111 by deleting "for private home viewing" in subsections (a)(4) and (d)(1)(A). Pub. L. No. 108-447, 118 Stat. 2809, 3393, 3406.

In 2006, the Copyright Royalty Judges Program Technical Corrections Act amended section 111(d)(2) by substituting "upon authorization by the Copyright Royalty Judges" for everything in the second sentence after "Librarian of Congress"; by substituting new text for the second sentence of (4)(B); by making a technical correction in the last sentence of (4)(B) to change "finds" to "find"; and by revising (4)(C) in its entirety. Pub. L. No. 109-303, 120 Stat. 1478, 1481.

The Prioritizing Resources and Organization for Intellectual Property Act of 2008 amended section 111 by deleting all references to section 509 (which was repealed). Pub. L. No. 110-403, 122 Stat. 4256, 4264.

The Satellite Television Extension and Localism Act of 2010 amended subsection 111(d)(1) by deleting subparagraphs (B) through (D) and replacing them with new subparagraphs (B) through (G); by amending paragraph 111(d)(2) to insert the parenthetical language in the first sentence; and by adding new paragraphs (5) through (7). Pub. L. No. 111-175, 124 Stat. 1218, 1232-35. It amended subsection 111(f) by numbering the previously undesignated paragraphs and adding subtitles to them; by substituting new language for the definition for primary transmissions; by amending the definition for local service area of a primary transmitter; by substituting new provisions to define distant signal equivalent, network station, independent station, and noncommercial educational station; and by adding definitions for primary stream, primary transmitter, multicast stream, simulcast, subscriber, and subscribe. *Id.*, at 124 Stat. 1235-38. The Act also added "of broadcast programming by cable" to the section title and made perfecting, technical, and clarifying amendments throughout section 111. *Id.*

The STELA Reauthorization Act of 2014 substantially amended the second sentence of section 111(f)(4), which defines the "local service area of a primary transmitter" for low power television stations, and made technical corrections. Pub. L. No. 113-200, 128 Stat. 2059, 2067.

46. Royalty rates specified by the compulsory licensing provisions of this section are subject to adjustment by Copyright Royalty Judges appointed by the Librarian of Congress in accordance with the provisions of chapter 8 of Title 17, *United States Code*, as amended by the Copyright Royalty and Distribution Reform Act of 2004, Pub. L. No. 108-419, 118 Stat. 2341. See chapter 8, *infra*. Regulations for adjusting royalty rates may be found in subchapter B of chapter 11, Title 37, *Code of Federal Regulations*.

47. In 1998, the Digital Millennium Copyright Act amended section 112 by redesignating subsection (a) as subsection (a)(1); by redesignating former sections (a)(1), (a)(2), and (a)(3) as subsections (a)(1)(A), (a)(1)(B), and (a)(1)(C), respectively; by adding subsection (a)(2); and by amending the language in new subsection (a)(1). Pub. L. No. 105-304, 112 Stat. 2860, 2888. The Digital Millennium Copyright Act also amended section 112 by redesignating subsection (e) as subsection (f) and adding a new subsection (e). Pub. L. No. 105-304, 112 Stat. 2860,

2899. In 1999, a technical amendment to section 112(e) redesignated paragraphs (3) through (10) as (2) through (9) and corrected the paragraph references throughout that section to conform to those redesignations. Pub. L. No. 106-44, 113 Stat. 221. The Technology, Education, and Copyright Harmonization Act of 2002 amended section 112 by redesignating subsection 112(f) as 112(g) and adding a new paragraph (f). Pub. L. No. 107-273, 116 Stat. 1758, 1912.

The Copyright Royalty and Distribution Reform Act of 2004 amended subsection 112(e) to conform it to revised chapter 8, by substituting new language for the first sentences of paragraphs (3) and (4); by deleting paragraph (6) and renumbering paragraphs (7) through (9) as (6) through (8); by changing references to the "Librarian of Congress" to "Copyright Royalty Judges," with corresponding grammatical changes, throughout; and by striking references to negotiations in paragraphs (3) and (4) along with making other conforming amendments. Pub. L. No. 108-419, 118 Stat. 2341, 2361.

48. The Visual Artists Rights Act of 1990 amended section 113 by adding subsection (d) at the end thereof. Pub. L. No. 101-650, 104 Stat. 5089, 5130.

49. The Digital Performance Right in Sound Recordings Act of 1995 amended section 114 as follows: 1) in subsection (a), by striking "and (3)" and inserting in lieu thereof "(3) and (6)"; 2) in subsection (b) in the first sentence, by striking "phonorecords, or of copies of motion pictures and other audiovisual works," and inserting "phonorecords or copies"; and 3) by striking subsection (d) and inserting in lieu thereof new subsections (d), (e), (f), (g), (h), (i), and (j). Pub. L. No. 104-39, 109 Stat. 336. In 1997, subsection 114(f) was amended in paragraph (1) by inserting all the text that appears after "December 31, 2000" and in paragraph (2) by striking "and publish in the Federal Register." Pub. L. No. 105-80, 111 Stat. 1529, 1531.

In 1998, the Digital Millennium Copyright Act amended section 114(d) by replacing paragraphs (1)(A) and (2) with amendments in the nature of substitutes. Pub. L. No. 105-304, 112 Stat. 2860, 2890. That Act also amended section 114(f) by revising the title; by redesignating paragraph (1) as paragraph (1)(A); by adding paragraph (1)(B) in lieu of paragraphs (2), (3), (4), and (5); and by amending the language in newly designated paragraph (1)(A), including revising the effective date from December 31, 2000, to December 31, 2001. Pub. L. No. 105-304, 112 Stat. 2860, 2894. The Digital Millennium Copyright Act also amended subsection 114(g) by substituting "transmission" in lieu of "subscription transmission," wherever it appears and, in the first sentence in paragraph (g)(1), by substituting "transmission licensed under a statutory license" in lieu of "subscription transmission licensed." Pub. L. No. 105-304, 112 Stat. 2860, 2897. That Act also amended subsection 114(j) by redesignating paragraphs (2), (3), (5), (6), (7), and (8) as (3), (5), (9), (12), (13), and (14), respectively; by amending paragraphs (4) and (9) in their entirety and redesignating them as paragraphs (7) and (15), respectively; and by adding new definitions, including paragraph (2) defining "archived program," paragraph (4) defining "continuous program," paragraph (6) defining "eligible nonsubscription transmission," paragraph (8) defining "new subscription service," paragraph (10) defining "preexisting satellite digital audio radio service," and paragraph (11) defining "preexisting subscription service." Pub. L. No. 105-304, 112 Stat. 2860, 2897.

The Small Webcaster Settlement Act of 2002 amended section 114 by adding paragraph (5) to subsection 114(f), by amending paragraph 114(g)(2), and by adding paragraph 114(g)(3). Pub. L. No. 107-321, 116 Stat. 2780, 2781 and 2784.

The Copyright Royalty and Distribution Reform Act of 2004 amended subsection 114(f) to conform it to revised chapter 8, by substituting new language for the first sentences of sub-

paragraphs (1)(A), (1)(B), (2)(A), and (2)(B); by substituting new language for subparagraphs (1)(C) and (2)(C); by changing references to the "Librarian of Congress" in paragraphs (1), (2), (3), and (4) to "Copyright Royalty Judges," and making corresponding grammatical changes; by striking references to negotiations in paragraphs (1), (2), (3), and (4) and replacing with corresponding grammatical changes and conforming language; and by adding new language at the end of subparagraph (4)(A). Pub. L. No. 108-419, 118 Stat. 2341, 2362–2364.

In 2006, the Copyright Royalty Judges Program Technical Corrections Act amended section 114 by substituting new text after "proceedings are to be commenced" in the first sentence in (f)(1)(A); by amending (2)(A) in its entirety; and by inserting "described in" in the last sentence of (2)(B) which repeats an amendment already made by the Copyright Royalty and Distribution Reform Act of 2004, Pub. L. No. 108 419, 118 Stat. 2341, 2364. Pub. L. No. 109-303, 120 Stat. 1478, 1481–82.

The Webcaster Settlement Act of 2008 amended part (5) of subsection 114(f) by deleting "small" wherever it appears before "commercial webcasters." Pub. L. No. 110-435, 122 Stat. 4974. The Webcaster Settlement Act of 2008 also amended subpart (5)(A) by substituting "for a period of not more than 11 years beginning on January 1, 2005" for "during the period beginning on October 28, 1998, and ending on December 31, 2004," by substituting "the Copyright Royalty Judges" in place of references to the copyright arbitration royalty panel and the Librarian of Congress and by changing "shall" to "may" at the beginning of the second sentence. *Id*. It amended subpart (5)(C) by adding a sentence at the end that states, "This subparagraph shall not apply to the extent that the receiving agent and a webcaster that is party to an agreement entered into pursuant to subparagraph (A) expressly authorize the submission of the agreement in a proceeding under this subsection." *Id*. It amended subpart (5)(D) by changing the reference in the first sentence from "the Small Webcaster Settlement Act of 2002" to "the Webcaster Settlement Act of 2008" and by substituting "Copyright Royalty Judges of May 1, 2007" for "Librarian of Congress of July 8, 2002." *Id*. It also amended subpart (5)(F) by substituting "February 15, 2009" for "December 15, 2002, except with respect to noncommercial webcasters for whom the authority shall expire May 31, 2003." *Id*.

The Webcaster Settlement Act of 2009 amended section 114 by adding a reference to itself in the first sentence of subpart (f)(5)(D); by deleting this text: "to make eligible nonsubscription transmissions and ephemeral recordings" at the end of subpart (f)(5)(E)(iii); and, in subpart (f)(5)(F), by changing the expiration to 11:59 p.m. on July 30, 2009, which is 30 days after the Webcaster Settlement Act of 2009 was enacted on June 30, 2009. Pub. L. No. 111-36, 123 Stat. 1926.

A technical correction in the Copyright Cleanup, Clarification, and Corrections Act of 2010 amended section 114(b) to change the reference from "section 118(g)" to "section 118(f)." Pub. L. No. 111-295, 124 Stat. 3180, 3181. It also amended subparagraph 114(f)(2)(C) by substituting "eligible nonsubscription services and new subscription services" for "preexisting subscription digital audio transmission services or preexisting satellite digital radio audio services." *Id*.

In 2018, the Orrin G. Hatch–Bob Goodlatte Music Modernization Act amended section 114(f) by replacing paragraph (1) in its entirety; deleting paragraph (2); redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively; and, in paragraph (4)(C), replacing "under paragraph (4)" with "under paragraph (3)." Pub. L. No. 115-264, 132 Stat. 3676, 3723–24, 25. The Act amended section 114(g) by adding "(5) LETTER OF DIREC-

tion."; "(6) Sound recordings fixed before november 1, 1995."; and "(7) Preemption of state property laws." to the end of the section. Pub. L. No. 115-264, 132 Stat. 3676, 3737–38, 3740. Besides the changes described, the Act made technical and conforming amendments throughout section 114(g). Pub. L. No. 115-264, 132 Stat. 3676, 3740. The Act also repealed section 114(i). Pub. L. No. 115-264, 132 Stat. 3676, 3724.

50. In 2018, the Orrin G. Hatch–Bob Goodlatte Music Modernization Act repealed subsection 114(i), but did not provide for re-lettering the subsequent subsection. Pub. L. No. 115-264, 132 Stat. 3676, 3724.

51. The Record Rental Amendment of 1984 amended section 115 by redesignating paragraphs (3) and (4) of subsection (c) as paragraphs (4) and (5), respectively, and by adding a new paragraph (3). Pub. L. No. 98-450, 98 Stat. 1727.

The Digital Performance Right in Sound Recordings Act of 1995 amended section 115 as follows: 1) in the first sentence of subsection (a)(1), by striking "any other person" and inserting in lieu thereof "any other person, including those who make phonorecords or digital phonorecord deliveries,"; 2) in the second sentence of the same subsection, by inserting before the period "including by means of a digital phonorecord delivery"; 3) in the second sentence of subsection (c)(2), by inserting "and other than as provided in paragraph (3)," after "For this purpose,"; 4) by redesignating paragraphs (3), (4), and (5) of subsection (c) as paragraphs (4), (5), and (6), respectively, and by inserting after paragraph (2) a new paragraph (3); and (5) by adding after subsection (c) a new subsection (d). Pub. L. No. 104-39, 109 Stat. 336, 344.

In 1997, section 115 was amended by striking "and publish in the Federal Register" in subparagraph 115(c)(3)(D). Pub. L. No. 105-80, 111 Stat. 1529, 1531. The same legislation also amended section 115(c)(3)(E) by replacing the phrases "sections 106(1) and (3)" and "sections 106(1) and 106(3)" with "paragraphs (1) and (3) of section 106." Pub. L. No. 105-80, 111 Stat. 1529, 1534.

The Copyright Royalty and Distribution Reform Act of 2004 amended paragraph 115(c)(3) to conform it to revised chapter 8, by substituting new language for the first sentences of subparagraphs (3)(C) and (3)(D); by changing references to the "Librarian of Congress" in subparagraphs (3)(C), (3)(D), and (3)(E) to "Copyright Royalty Judges," with corresponding grammatical changes; by striking references to negotiations in subparagraphs (3)(C) and (D) and making corresponding grammatical changes and conforming language; by deleting subparagraph (F); and by redesignating paragraphs (G) through (L) as paragraphs (F) through (K) with corresponding technical changes in subparagraphs (A), (B), and (E) to conform references to the subparagraphs subject to that redesignation. Pub. L. No. 108-419, 118 Stat. 2341, 2364–2365. The Copyright Royalty and Distribution Act of 2004 also amended the first sentence of subparagraph 115(c)(3)(B) by substituting "section" for "paragraph" and by inserting "on a nonexclusive basis" after "common agents." *Id.* at 2364. It also amended subparagraph 115(c)(3)(E) by inserting "as to digital phonorecord deliveries" after "shall be given effect." *Id.* at 2365.

In 2006, the Copyright Royalty Judges Program Technical Corrections Act amended 115(c)(3)(B) by inserting "this subparagraph and subparagraphs (C) through (E)" in lieu of "subparagraphs (B) through (F)." The Act also amended the third sentence of 115(c)(3)(D) by inserting "in subparagraphs (B) and (C)" after "described"; and 115(c)(3)(E)(i) and (ii)(I) by substituting "(C) and (D)" for "(C) or (D)" wherever it appears. Pub. L. No. 109-303, 120 Stat. 1478, 1482.

The Prioritizing Resources and Organization for Intellectual Property Act of 2008 amended subparts (3)(G)(i) and (6) of subsection 115(c) by removing the reference to section 509 (which was repealed). Pub. L. No. 110-403, 122 Stat. 4256, 4264.

In 2018, the Orrin G. Hatch–Bob Goodlatte Music Modernization Act amended section 115(a) by inserting "IN GENERAL" after "AVAILABILITY AND SCOPE OF COMPULSORY LICENSE" in the subsection heading; replacing paragraph (1) in its entirety; and deleting "A compulsory license" and inserting "MUSICAL ARRANGEMENT.—A compulsory license" in paragraph (2). Pub. L. No. 115-264, 132 Stat. 3676, 3677–78. The Act also amended subsections (b), (c), and (d) in their entirety by substituting new language and added a new subsection (e). Pub. L. No. 115-264, 132 Stat. 3676, 3678–3721.

52. See note 46, *supra*.

53. There was a minor drafting error for this text in the Prioritizing Resources and Organization for Intellectual Property Act of 2008. Pub. L. No. 110-403, 122 Stat. 4256, 5264. To delete the reference to "and section 509," it deleted "and 509," thereby, technically, not including the word "section" in the amendment. A technical amendment in the Copyright Cleanup, Clarification, and Corrections Act of 2010 corrected this error. Pub. L. No. 111-295, 124 Stat. 3180, 3181.

54. The Berne Convention Implementation Act of 1988 added section 116A. Pub. L. No. 100-568, 102 Stat. 2853, 2855. The Copyright Royalty Tribunal Reform Act of 1993 redesignated section 116A as section 116; repealed the preexisting section 116; in the redesignated section 116, struck subsections (b), (e), (f), and (g), and redesignated subsections (c) and (d) as subsections (b) and (c), respectively; and substituted, where appropriate, "Librarian of Congress" or "copyright arbitration royalty panel" for "Copyright Royalty Tribunal." Pub. L. No. 103-198, 107 Stat. 2304, 2309. In 1997, section 116 was amended by rewriting subsection (b)(2) and by adding a new subsection (d). Pub. L. No. 105-80, 111 Stat. 1529, 1531.

The Copyright Royalty and Distribution Reform Act of 2004 amended section 116 to conform it to revised chapter 8, by substituting new language for subsection (b)(2); by changing the title of subsection (c) to "License Agreements Superior to Determinations by Copyright Royalty Judges" from "License Agreements Superior to Copyright Arbitration Royalty Panel Determinations"; and, in subsection (c), by striking "copyright arbitration royalty panel" and replacing it with "Copyright Royalty Judges." Pub. L. No. 108-419, 118 Stat. 2341, 2365.

55. In 1980, section 117 was amended in its entirety. Pub. L. No. 96-517, 94 Stat. 3015, 3028. In 1998, the Computer Maintenance Competition Assurance Act amended section 117 by inserting headings for subsections (a) and (b) and by adding subsections (c) and (d). Pub. L. No. 105-304, 112 Stat. 2860, 2887.

56. The Copyright Royalty Tribunal Reform Act of 1993 amended section 118 by striking the first two sentences of subsection (b), by substituting a new first sentence in paragraph (3), and by making general conforming amendments throughout. Pub. L. 103-198, 107 Stat. 2304, 2309. In 1999, a technical amendment deleted paragraph (2) from section 118(e). Pub. L. No. 106-44, 113 Stat. 221, 222. The Intellectual Property and High Technology Technical Amendments Act of 2002 amended section 118 by deleting "to it" in the second sentence in subsection (b)(1). Pub. L. No. 107-273, 116 Stat. 1758, 1909.

The Copyright Royalty and Distribution Reform Act of 2004 amended section 118 to conform it to revised chapter 8, by deleting the last sentence in paragraph (b)(1); by revising

paragraph (b)(2) by rewriting the end of sentence after "determination by the"; by substituting new language for the first sentence of paragraph (3), thereby, creating new paragraphs (3) and (4); by deleting subsection (c) and redesignating sections (d) through (g) as (c) through (f) with a corresponding technical change in section (f) to refer to "subsection (c)" instead of "subsection (d)"; and by changing references to the "Librarian of Congress" in subsections (b) and (d), as redesignated, to "Copyright Royalty Judges," with corresponding grammatical or procedural changes. Pub. L. No. 108-419, 118 Stat. 2341, 2365–2366. The Copyright Royalty and Distribution Reform Act of 2004 also amended section 118 in text that became the second sentence of new subparagraph (4), see *supra*, by inserting "or (3)" after "paragraph 2". *Id.* at 2366. It further amended subsection 118(c) by inserting "or (3)" after "provided by subsection (b)(2)" and by inserting "to the extent that they were accepted by the Librarian of Congress" after "under subsection (b)(3)" and before the comma. *Id.*

In 2006, the Copyright Royalty Judges Program Technical Corrections Act amended subsection 118(b)(3) by inserting "owners of copyright in works" in lieu of "copyright owners in works"; by amending the first sentence of (c); and by substituting "(f)" for "(g)" in (c)(1). Pub. L. No. 109-303, 120 Stat. 1478, 1482.

57. The Satellite Home Viewer Act of 1988 added section 119. Pub. L. No. 100-667, 102 Stat. 3935, 3949. The Copyright Royalty Tribunal Reform Act of 1993 amended subsections (b) and (c) of section 119 by substituting "Librarian of Congress" in lieu of "Copyright Royalty Tribunal" wherever it appeared and by making related conforming amendments. Pub. L. No. 103-198, 107 Stat. 2304, 2310. The Copyright Royalty Tribunal Reform Act of 1993 also amended paragraph (c)(3) by deleting subparagraphs (B), (C), (E), and (F) and by redesignating subparagraph (D) as (B), (G) as (C), and (H) as (D). The redesignated subparagraph (C) was amended in its entirety and paragraph (c)(4) was deleted. *Id.*

The Satellite Home Viewer Act of 1994 further amended section 119. Pub. L. No. 103-369, 108 Stat. 3477. In 1997, technical corrections and clarifications were made to the Satellite Home Viewer Act of 1994. Pub. L. No. 105-80, 111 Stat. 1529. Those two acts amended section 119 as follows: 1) by deleting or replacing obsolete effective dates; 2) in subsection (a)(5), by adding subparagraph (D); 3) in subsection (a), by adding paragraphs (8), (9), and (10); 4) in subsection (b)(1)(B), by adjusting the royalty rate for retransmitted superstations; 5) in subsection (c)(3), by replacing subparagraph (B) with an amendment in the nature of a substitute; 6) in subsections (d)(2) and (d)(6), by modifying the definition of "network station" and "satellite carrier"; and 7) in subsection (d), by adding paragraph 11 to define "local market."

Pursuant to section 4 of the Satellite Home Viewer Act of 1994, the changes made by that Act to section 119 of the *United States Code* ceased to be effective on December 31, 1999. Pub. L. No. 103-369, 108 Stat. 3477, 3481. However, section 1003 of the Satellite Home Viewer Improvement Act of 1999 extended that date to December 31, 2004. Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-527.

The Digital Performance Right in Sound Recordings Act of 1995 amended section 119 in the first sentence of subsections (a)(1) and (a)(2)(A), respectively, by inserting the words "and section 114(d)" after "of this subsection." Pub. L. No. 104-39, 109 Stat. 336, 348. In 1999, a technical amendment substituted "network station's" for "network's stations" in section 119(a)(8)(C)(ii). Pub. L. No. 106-44, 113 Stat. 221, 222.

The Satellite Home Viewer Improvement Act of 1999 amended section 119(a)(1) as follows: 1) by inserting "and PBS satellite feed" after "Superstations" in the paragraph heading;

2) by inserting "performance or display of a work embodied in a primary transmission made by a superstation or by the Public Broadcasting Service satellite feed" in lieu of "primary transmission made by a superstation and embodying a performance or display of a work," (see this note, *infra*); and 3) by adding the last sentence, which begins "In the case of the Public Broadcasting Service." Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-530 and 543. The Act states that these amendments shall be effective as of July 1, 1999, except for a portion of the second item, starting with "performance or display" through "superstation." Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-544. The Act also amended section 119(a) by inserting the phrase "with regard to secondary transmissions the satellite carrier is in compliance with the rules, regulations, or authorization of the Federal Communications Commission governing the carriage of television broadcast stations signals" in paragraphs (1) and (2) and by inserting into paragraph (2), "a performance or display of a work embodied in a primary transmission made by a network station" in lieu of "programming contained in a primary transmission made by a network station and embodying a performance or display of a work." *Id.* at 1501A-531 and 544. The Act amended section 119(a)(2) by substituting new language for paragraph (B) and, in paragraph (C), by deleting "currently" after "the satellite carrier" near the end of the first sentence. *Id.* at 1501A-528 and 544. It also amended section 119(a)(4) by inserting "a performance or display of a work embodied in" after "by a satellite carrier of" and by deleting "and embodying a performance or display of a work." *Id.* at 1501A-544. The Satellite Home Viewer Improvement Act of 1999 further amended section 119(a) by adding subparagraph (E) to paragraph (5). *Id.* at 1501A-528. It amended section 119(a)(6) by inserting "performance or display of a work embodied in" after "by a satellite carrier of" and by deleting "and embodying a performance or display of a work." *Id.* The Act also amended section 119(a) by adding paragraphs (11) and (12). *Id.* at 1501A-529 and 531.

The Satellite Home Viewer Improvement Act of 1999 amended section 119(b)(1) by inserting "or the Public Broadcasting Service satellite feed" into subparagraph (B). *Id.* at 1501A-530. The Act amended section 119(c) by adding a new paragraph (4). *Id.* at 1501A-527. The Act amended section 119(d) by substituting new language for paragraphs (9) through (11) and by adding paragraph (12). *Id.* at 1501A-527, 530, and 531. The Act substituted new language for section 119(e). *Id.* at 1501A-529.

The Intellectual Property and High Technology Technical Amendments Act of 2002 amended section 119(a)(6) by substituting "of a performance" for "of performance." Pub. L. No. 107-273, 116 Stat. 1758, 1909. The Act also amended section 119(b)(1)(A) by substituting "retransmitted" and "retransmissions" for "transmitted" and "transmitted," respectively, in paragraph (1)(A). *Id.*

The Copyright Royalty and Distribution Reform Act of 2004 amended section 119 to conform it to revised chapter 8 by changing references to the "Librarian of Congress" in subsections (b) and (c) to "Copyright Royalty Judges," with corresponding grammatical adjustments and procedural references; by substituting new language for subparagraphs (b)(4)(B) and (C); by deleting the term "arbitration" wherever it appears with "proceedings," along with corresponding grammatical adjustments; by amending the title of subparagraph 119(c)(3)(C) to insert "Determination under Chapter 8" in lieu of "Decision of Arbitration Panel or Order of Librarian"; and, also, in subparagraph (c)(3)(C), by substituting new language for clauses (i) and (ii). Pub. L. No. 108-419, 118 Stat. 2341, 2364–2365.

The Satellite Home Viewer Extension and Reauthorization Act of 2004 amended paragraph 119(a)(1) by deleting "and PBS satellite feed" from the title; by deleting "or by the Public Broadcasting Service satellite feed" from the first sentence; by deleting the last sentence, which concerned Public Broadcasting Service satellite feed; by inserting "or for viewing in a commercial establishment" after "for private home viewing"; and by substituting "subscriber" for "household." Pub. L. No. 108-447, 118 Stat. 2809, 3393, 3394 and 3406. It amended subparagraph 119(a)(2)(B) by inserting at the end of clause (i) "The limitation in this clause shall not apply to secondary transmissions under paragraph (3)." *Id.* at 3397. It amended subsection (C) in its entirety by substituting new language. *Id.* at 3394. It amended paragraph 119(a)(5), which is now renumbered as 119(a)(7), in the first sentence of subparagraph (A), by inserting "who is not eligible to receive the transmission under this section" in lieu of "who does not reside in an unserved household" and, in the first sentence of subparagraph (B), by making the same change but using "are" instead of "is"; and, in subparagraph (D), by substituting "is to a subscriber who is eligible to receive the secondary transmission under this section" in lieu of "is for private home viewing to an unserved household." *Id.* at 3404. The Act further amended subsection 119(a) by adding new paragraphs, redesignated as paragraphs (3) and (4); by deleting paragraph eight; by renumbering the paragraphs affected by those changes; and by revising the references to old paragraph numbers, accordingly, in paragraphs (1) and (2), to be the new numbers as redesignated. *Id.* at 3394, 3396, and 3397. The Act further amended subsection 119(a) by adding at the end three new paragraphs, designated as new paragraphs (14), (15) and (16). *Id.* at 3400, 3404 and 3408.

The Satellite Home Viewer Extension and Reauthorization Act of 2004 amended the title of subsection 119(b) by deleting "for Private Home Viewing." *Id.* at 3406. It also amended subparagraph 119(b)(1)(A) and subparagraph 119(b)(3) by deleting "for private home viewing." *Id.* The Act amended subparagraph 119(b)(1)(B) in its entirety by substituting new language. *Id.* at 3400. It added a new paragraph at the end of paragraph 119(b)(1). *Id.* at 3401.

The Satellite Home Viewer Extension and Reauthorization Act of 2004 amended subsection 119(c) in its entirety. *Id.* The Satellite Home Viewer Extension and Reauthorization Act of 2004 amended paragraph 119(d)(1) by deleting "for private home viewing" after "individual subscribers" and by adding at the end "in accordance with the provisions of this section." *Id.* at 3406. It amended subparagraph 119(d)(2)(A) by substituting, at the beginning of the first sentence, "a television station licensed by the Federal Communications Commission" in lieu of "a television broadcast station." *Id.* The Act amended paragraph 119(d)(8) by substituting "or entity that" in lieu of "who"; by deleting "for private home viewing"; and by inserting at the end "in accordance with the provisions of this section." *Id.* It amended subparagraph 119(d)(10)(D) by changing "(a)(11)" to "(a)(12)". *Id.* at 3405. It amended in their entireties paragraph 119(d)(9), subparagraph (119)(d)(10)(B) and paragraphs 119(d)(11) and (12). *Id.* at 3405 and 3406.

The Satellite Home Viewer Extension and Reauthorization Act of 2004 amended subsection 119(e) by changing the date at the beginning of the sentence from "December 31, 2004" to "December 31, 2009". *Id.* at 3394. The Satellite Home Viewer Extension and Reauthorization Act of 2004 amended section 119 by adding a new subsection (f). *Id.* at 3394.

In 2006, the Copyright Royalty Judges Program Technical Corrections Act amended section 119 by revising the second sentence of (b)(4)(B); by amending (b)(4)(C) in its entirety; and by making a technical correction to substitute "arbitration" for "arbitrary" in

(c)(1)(F)(i). Pub. L. No. 109-303, 120 Stat. 1478, 1482–83. The Prioritizing Resources and Organization for Intellectual Property Act of 2008 amended subparts (6), (7)(A), (8), and (13) of subsection 119(a) by removing the reference to section 509 (which was repealed). Pub. L. No. 110-403, 122 Stat. 4256, 4264.

Besides the changes described below, the Satellite Television Extension and Localism Act of 2010 made perfecting, technical, and clarifying amendments throughout section 119. Pub. L. No. 111-175, 124 Stat. 1218. It also substituted "non-network station" for "superstation" throughout section 119, revised the title to substitute "distant television programming by satellite" for "superstations and network stations for private home viewing" and added a new subsection (g) at the end. *Id.*, at 124 Stat. 1219, 1233, 1239–44.

In addition, the Satellite Television Extension and Localism Act of 2010 amended subsection 119(a) by deleting the last sentence in subparagraph (a)(2)(B)(i); by deleting paragraph (a)(2)(C); by revising subparagraphs (a)(2)(C)(i) and (ii) in the newly designated paragraph (C); by deleting subsection (a)(3); in the newly designated paragraph (3), by revising subparagraphs (a)(3)(B) and (C) and deleting "analog" wherever it appeared; in newly designated subsection (a)(6), by increasing the statutory damages in (6)(A)(ii) and (6)(B)(ii) from $5 and $250,000 to $250 and $2,500,000, respectively, and, in (6)(B)(i), by substituting "$2,500,000 for each 3-month period" for "$250,000 for each 6 month period;" by adding the last paragraph of subsection (a)(6) and by deleting subsection (a)(15). Pub. L. No. 111-175, 124 Stat. 1218, 1219, 1223–28.

Furthermore, the Satellite Television Extension and Localism Act of 2010 amended the title of subsection 119(b) by deleting "Statutory License for Secondary Transmissions" and inserting "Deposit of Statements and Fees; Verification Procedures. *Id.*, 124 Stat. 1220. It amended subsection 119(b) by revising subparagraph (b)(1)(B), adding new subparagraph (b)(1)(C), and deleting the last sentence of (b)(1); by adding a new subsection (b)(2); and by inserting "(including the filing fee specified in paragraph (1)(C))" into the first sentence of subsection (b)(3). *Id.*, at 124 Stat. 1220, 1223–24.

Public Law No. 111-175 amended subsection 119(c) throughout by deleting the references to "analog" and to "arbitration" and by substituting "Copyright Royalty Judges" for "Librarian of Congress." *Id.*, at 124 Stat. 1220, 21. It also amended subsection 119(c) by changing the reference in paragraph (c)(1)(A) from July 1, 2004, to July 1, 2009, to designate the regulation that establishes royalty fees and by changing the deadline in paragraph (c)(1)(A) from January 2, 2004, to January 2, 2010, for publishing notice in the *Federal Register* of initiation of voluntary negotiations. *Id.*, at 124 Stat. 1220. The Act further amended subsection 119(c) by adding subtitles for the subparagraphs in paragraph (c)(1)(D); by substituting "Copyright Royalty Judges" for "Copyright Office" in paragraph (c)(1)(E); by amending the subtitle for paragraph (c)(1)(F) to substitute "Copyright Royalty Judges Proceeding" for "Compulsory Arbitration;" and by revising subparagraphs (c)(1)(F)(ii) and (iii). *Id.*, at 124 Stat. 1221. The Act revised subsection 119(c)(2). *Id.*, at 124 Stat. 1222.

Public Law No. 111-175 amended subsection 119(d) by revising the definitions for subscriber and subscribe at (d)(8), for unserved household at (d)(10) and for local market at (d)(11). *Id.*, at 124 Stat. 1219, 1222–23. It deleted the definition for low power television station at (d)(12) and added definitions for qualifying date in newly designated paragraph (d)(13), multicast stream at (d)(14), and primary stream at (d)(15). *Id.*, at 124 Stat. 1219–20, 1223.

The Act amended subsection 119(e) to extend the moratorium on copyright liability for satellite subscribers from December 31, 2009, to December 31, 2014. See note 62.

A technical correction in the Copyright Cleanup, Clarification, and Corrections Act of 2010 amended subparagraph 119(g)(4)(B)(vi) to substitute "an examination" for "the examinations." Pub. L. No. 111-295, 124 Stat. 3180, 3181.

The STELA Reauthorization Act of 2014 amended section 119 by adding a new subsection (h) at the end to establish December 31, 2019, as the expiration date for the section 119 license. Pub. L. No. 113-200, 128 Stat. 2059, 2066.

The Satellite Television Community Protection and Promotion Act of 2019 amended subsection (a)(2)(A) of section 119 by striking "signals, and" and inserting "signals," and by inserting ", and the carrier provides local-into-local service to all DMAs" after "receiving the secondary transmission"; and inserts after that new sentence: "Failure to reach an agreement with a network station to retransmit the signals of the station shall not be construed to affect compliance with providing local-into-local service to all DMAs if the satellite carrier has the capability to retransmit such signals when an agreement is reached." Pub. L. No. 116-94, 133 Stat. 2534, 3201–02. The Act further amended subsection (a)(2)(B) by striking clauses (ii) and (iii) and inserting a new clause (ii) regarding short markets. Pub. L. No. 116-94, 133 Stat. 2534, 3202. Further, the Act deleted subsections (a)(3), (a)(6)(E), (a)(9), (a)(10), and (a)(13). Pub. L. No. 116-94, 133 Stat. 2534, 3202. The Act amended subsection (c)(1)(E) by deleting the comma after "in the agreement," deleting "until December 31, 2019, or," deleting "whichever is later," and inserting "until the subscriber for which the royalty is payable is no longer eligible to receive a secondary transmission pursuant to the license under this section." Pub. L. No. 116-94, 133 Stat. 2534, 3202. The Act amended subsection (d) by deleting subparagraphs (A), (B), (C), and (E), redesignating subparagraph (D) as (A), and adding a new subparagraph (B); the Act further deleted paragraph (13) and added two new definitional paragraphs under subsection (d). Pub. L. No. 116-94, 133 Stat. 2534, 3202–03. Further, the Act deleted subsections (e) and (h) and amended subsection (g)(7) by inserting ", except for designated market areas where the entity is temporarily or permanently unable to provide local service as a result of an act of god or other force majeure event beyond the control of the entity" after "section 122." Pub. L. No. 116-94, 133 Stat. 2534, 3203. Lastly, the Act made various conforming amendments in accordance with the substantive amendments. Pub. L. No. 116-94, 133 Stat. 2534, 3203.

58. The Satellite Home Viewer Improvement Act of 1999 amended section 119(a)(1) by deleting "primary transmission made by a superstation and embodying a performance or display of a work" and inserting in its place "performance or display of a work embodied in a primary transmission made by a superstation." Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-543. This amendatory language did not take into account a prior amendment that had inserted "or by the Public Broadcasting Service satellite feed" after "superstation" into the phrase quoted above that was deleted. Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-530. There was no mention of the phrase "or by the Public Broadcasting Service satellite feed" in that second amendment. The Intellectual Property and High Technology Technical Amendments Act of 2002 clarified these provisions. Pub. L. No. 107-273, 116 Stat. 1758, 1908. The Act deleted the first change and amended the second to clarify that the amended language should read, "performance or display of a work embodied in a primary transmission made by a superstation or by the Public Broadcasting Service satellite feed." *Id.* The Prioritizing Resources and Organization for Intellectual Property Act of 2008 amended subparts (6), (7)

(A), (8), and (13) of subsection 119(a) by removing the reference to section 509 (which was repealed). Pub. L. No. 110-403, 122 Stat. 4256, 4264.

59. The Satellite Home Viewer Act of 1994 states that "The provisions of section 119 (a)(5)(D) … relating to the burden of proof of satellite carriers, shall take effect on January 1, 1997, with respect to civil actions relating to the eligibility of subscribers who subscribed to service as an unserved household before the date of the enactment of this Act [October 18, 1994]." Pub. L. No. 103-369, 108 Stat. 3477, 3481.

60. The Intellectual Property and High Technology Technical Amendments Act of 2002 made a technical correction to insert the word "a" before "performance." Pub. L. No. 107-273, 116 Stat. 1758, 1909.

61. The Satellite Home Viewer Improvement Act of 1999 stated that section 119(a), "as amended by section 1005(e)" of the same Act, was amended to add a new paragraph (12). Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-531. The Intellectual Property and High Technology Technical Amendments Act of 2002 made a technical correction to clarify that the amendment was to section 119(a) as amended by "section 1005(d)" of the Satellite Home Viewer Improvement Act of 1999 rather than "section 1005(e)." Pub. L. No. 107-273, 116 Stat. 1758, 1908.

62. Section 119(c)(1)(E) establishes the time period during which the obligation to pay royalty fees established under a voluntary agreement that is filed with the Copyright Royalty Judges is in effect. The original December 31, 2009, expiration date was extended several times. The 2010 Department of Defense Appropriations Act extended the date to February 28, 2010. Pub. L. No. 111-118, 123 Stat. 3409, 3469. The Temporary Extension Act of 2010 extended it to March 28, 2010. Pub. L. No. 111-144, 124 Stat. 42, 47. The Satellite Television Extension Act of 2010 extended it to April 30, 2010. Pub. L. No. 111-151, 124 Stat. 1027. The Continuing Extension Act of 2010 extended the date to May 31, 2010. Pub. L. No. 111-157, 124 Stat. 1116, 1119. The Satellite Television Extension and Localism Act of 2010 extended it to December 31, 2014. Pub. L. No. 111-175, 124 Stat. 1218, 1221. The STELA Reauthorization Act of 2014 further extended the time period to December 31, 2019. Pub. L. No. 113-200, 128 Stat. 2059, 2066.

The Satellite Television Community Protection and Promotion Act of 2019 revised the time period to be "until the subscriber for which the royalty is payable is no longer eligible to receive a secondary transmission pursuant to the license under this section." Pub. L. No. 116-94, 133 Stat. 2534, 3202.

63. In 1990, the Architectural Works Copyright Protection Act added section 120. Pub. L. No. 101-650, 104 Stat. 5089, 5133. The effective date provision of the Act states that its amendments apply to any work created on or after the date it was enacted, which was December 1, 1990. It also states that the amendments apply to "any architectural work that, on [December 1, 1990], is unconstructed and embodied in unpublished plans or drawings, except that protection for such architectural work under Title 17, *United States Code*, by virtue of the amendments made by [the Act], shall terminate on December 31, 2002, unless the work is constructed by that date." *Id.*, 104 Stat. 5089, 5134.

64. The Legislative Branch Appropriations Act, 1997, added section 121. Pub. L. No. 104-197, 110 Stat. 2394, 2416. The Work Made for Hire and Copyright Corrections Act of 2000 amended section 121 by substituting "section 106" for "sections 106 and 710." Pub. L. No. 106-379, 114 Stat. 1444, 1445.

The Individuals with Disabilities Education Improvement Act of 2004 amended section 121 by amending paragraph (c)(3) in its entirety; by adding a new paragraph (c)(4); by

redesignating subsection (c) as (d); and by adding a new subsection (c). Pub. L. No. 108-446, 118 Stat. 2647, 2807.

In 2018, the Marrakesh Treaty Implementation Act amended section 121 by replacing "[a] specialized format[s]" with "[an] accessible format[s]" throughout, and by replacing "blind or other persons with disabilities" with "eligible persons" throughout; and by amending subsection (a) by deleting the term "nondramatic," and by adding "or of a previously published musical work that has been fixed in the form of text or notation" after "literary work"; and by amending paragraph (b)(1)(A) by adding "in the United States" after "distributed." Pub. L. No. 115-261, 132 Stat. 3667. The Act amended subsection (d) by adding a new definition of "accessible format," replacing the definition of "blind or other persons with disabilities" with a definition of "eligible person," and deleting the definition of "specialized formats." Pub. L. No. 115-261, 132 Stat. 3667, 3668.

65. In 2018, the Marrakesh Treaty Implementation Act added section 121A. Pub. L. No. 115-261, 132 Stat. 3667, 3668-69.

66. Throughout section 122 the date of enactment of the Satellite Television and Localism Act of 2010 (STELA) is incorporated by reference. STELA was enacted on May 27, 2010. Pub. L. No. 111-175, 124 Stat. 1218.

The Satellite Home Viewer Improvement Act of 1999 added section 122. Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-523. The Act states that section 122 shall be effective as of November 29, 1999. Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-544.

The Satellite Home Viewer Extension and Reauthorization Act of 2004 amended section 122 by adding a subparagraph (D) to paragraph (j)(2). Pub. L. No. 108-447, 118 Stat. 2809, 3393, 3409.

The Prioritizing Resources and Organization for Intellectual Property Act of 2008 amended subsections 122(a) and (b) by removing the reference to section 509 (which was repealed). Pub. L. No. 110-403, 122 Stat. 4256, 4264.

The Satellite Television Extension and Localism Act of 2010 amended section 122 by deleting "by satellite carriers within local markets" from the title and replacing that text with "of local television programming by satellite;" by revising subsection (a); by deleting the second half of the first sentence in paragraph (b)(1) and adding subparagraphs (A) and (B); by revising subparagraph (b)(2) to add paragraphs (A) and (B); and by inserting, "For Certain Secondary Transmissions" at the end of the title for subsection (c) and adding "paragraphs (1), (2), and (3) of" to the text. Pub. L. No. 111-175, 124 Stat. 1218, 1227-30. The Act amended subsection 122(f) by inserting "subject to statutory licensing by reason of paragraph (2)(A), (3), or (4) of subsection (a), or subject to" into paragraphs (1) and (2); by increasing the statutory damages in subparagraph (1)(B) from $5 to $250; by increasing the statutory damages in subparts (2)(A)(ii) and (B)(ii) from $250,000 to $2,500,000; and by inserting "paragraph (2)(A), (3), or (4) of subsection (a)" into subsection (g). *Id.*, at 124 Stat. 1230. It also amended subsection (j) by inserting new paragraphs (3) and (5); by revising newly designated paragraph (6); and by inserting "non-network station" into the title of newly designated paragraph (4) and its text. *Id.*, at 124 Stat. 1231.

The STELA Reauthorization Act of 2014 amended section 122(j)(2) by adding a new definition for "market determinations." Pub. L. No. 113-200, 128 Stat. 2059, 2067.